

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 (Asheville Division)

4 -----X
5 UNITED STATES OF AMERICA, :
6 Plaintiff :
7 :
8 vs :Criminal Action:1:12-CR-25
9 :
10 DEBORAH LEE TIPTON, :
11 Defendant. :
12 -----X

13 Wednesday, September 18, 2013
14 Asheville, North Carolina

15 The above-entitled action came on for a Sentencing
16 Hearing Proceeding before the HONORABLE MARTIN K.
17 REIDINGER, United States District Judge, in Courtroom 1
18 commencing at 10:15 a.m.

19 **APPEARANCES:**

20 On behalf of the Government:
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On behalf of the Defendant:
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Official Court Reporter

I N D E X

DIRECT CROSS

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1 P R O C E E D I N G S

2 THE COURT: The next matter we have is the case of
3 United States versus Deborah Lee Tipton, which is before
4 the Court for the sentencing of the defendant pursuant to
5 her plea of guilty on the charges of knowingly
6 transporting a visual depiction of the sexual
7 exploitation of minors and photos of the sexual
8 exploitation of minors, in violation of 18 U.S.C.,
9 Section 2252(a)(1), (a)(4)(B), and subsection (b).

10 Mr. Stewart, is the defendant prepared to
11 proceed?

12 MR. STEWART: Good morning, Your Honor. Yes, sir,
13 she's here and we're prepared to proceed.

14 THE COURT: Ms. Randall, is the government
15 prepared to proceed?

16 MS. RANDALL: Yes, Your Honor.

17 THE COURT: In preparation for this hearing, I
18 will say I think I have read more things than I have read
19 for any sentencing hearing in the last three years. I
20 have read a multitude of objections to the presentence
21 report. I have read the motion for departure on behalf
22 of the defendant. I have read the sentencing memorandum
23 on behalf of the defendant. I have read the letters of
24 support submitted on behalf of the defendant. I have
25 read the government's statement or memorandum regarding

1 the issue of restitution. Are there any other items that
2 I should have reviewed that I didn't mention?

3 Mr. Stewart, any submitted by the defendant?

4 MR. STEWART: Your Honor, please. And I'm sure
5 you read them, because you had mentioned it in a
6 roundabout fashion. In addition to the motion filed by
7 the defendant for a downward departure, there was a
8 separate motion filed for a variance in this matter.
9 Your Honor's comment on that, so I note you have read
10 that.

11 THE COURT: I have.

12 MR. STEWART: Additionally, Your Honor, please,
13 there were a number of letters that were sort of combined
14 into one exhibit that was filed with the court. I think
15 it was filed at the same time for a motion for variance.
16 I'm sure that did not escape your attention either.

17 THE COURT: That's been reviewed as well.

18 MR. STEWART: Yes, sir. I had commented before
19 about the issue about all the exhibits that were
20 attached, both to Mr. Jackson's motion for downward
21 departure and his objections to the presentence report.
22 All of those exhibits, as I understand it, have actually
23 been incorporated into the record and offered before the
24 Court as exhibits in the sentencing -- the sentencing
25 hearing that's to take place. I just wanted to make sure

1 those were part of the record. I think the Court has
2 assured me you felt it was, so it needs no further
3 explanation.

4 THE COURT: I was just checking again. All of the
5 ones on the hard copy that was delivered for my review
6 show the entry in the electronic filing system and,
7 therefore, I'm confident that everything that I have
8 reviewed and was brought for me to review has in fact
9 been filed in the record in this court.

10 MR. STEWART: Thank you, Your Honor. That's all
11 we would have. Thank you.

12 THE COURT: Thank you.

13 Ms. Randall, was there anything else filed on
14 behalf of the government that I did not mention?

15 MS. RANDALL: No, Your Honor.

16 THE COURT: Ms. Tipton, I need for you to stand
17 please. Do you recall appearing before the magistrate
18 judge on or about the 19th of September of last year for
19 the purpose of entering a plea of guilty in this case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you remember being sworn in or
22 being placed under oath at that time?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you remember answering the
25 questions of the magistrate judge?

1 THE DEFENDANT: Yes.

2 THE COURT: Is it correct that at that time you
3 signed a Plea Inquiry Form indicating that your answers
4 were true and correct at the time they were given?

5 THE DEFENDANT: Yes.

6 THE COURT: Were your answers, in fact, true and
7 correct when you answered the questions of the magistrate
8 judge?

9 THE DEFENDANT: Yes.

10 THE COURT: If I asked you all the same questions
11 here today, would your answers be the same?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Stewart, were you in attendance
14 at the Rule 11 hearing for your client?

15 MR. STEWART: Yes, sir, I was.

16 THE COURT: Are you satisfied that your client
17 fully understood the questions that were asked of her by
18 the magistrate judge at that hearing?

19 MR. STEWART: Yes, sir, Your Honor.

20 THE COURT: Are you satisfied that she has fully
21 understood the questions that I've asked her here today?

22 MR. STEWART: Yes, sir.

23 THE COURT: Ms. Tipton, did you answer those
24 questions the way that you did and are you pleading
25 guilty because you did, in fact, commit the crimes with

1 which you are charged?

2 THE DEFENDANT: Yes.

3 THE COURT: Is your plea of guilty the result of
4 any threat or force or promise, other than promises that
5 may be in your plea agreement?

6 THE DEFENDANT: No.

7 THE COURT: Are you pleading guilty voluntarily?

8 THE DEFENDANT: Yes.

9 THE COURT: In this case you're pleading guilty
10 pursuant to a plea agreement. In that plea agreement,
11 you have agreed, and the government has agreed, to
12 certain facts and certain factors for sentencing. Under
13 the law I am not required to accept those factors or
14 those facts simply because both sides have agreed. And
15 if I decline to accept any of those facts or factors in
16 my sentencing decision you will not have the right to
17 withdraw your plea. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: I see you nodding, but I need it on
20 the record.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: I do understand that.

24 THE COURT: Is it still your plea to plead guilty
25 in this matter?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Based on the representations made to
3 the Court and the answers given by the defendant at the
4 Rule 11 hearing before the magistrate judge, the Court
5 concludes and finds and confirms that the defendant's
6 plea is knowingly and voluntarily made and that the
7 defendant understands the charge, potential penalties,
8 and the consequences of her plea.

9 Mr. Stewart, does the defendant stipulate that
10 there is a factual basis to support her plea of guilty
11 entered in this case and, further, that the Court may
12 accept the evidence as set forth in the presentence
13 report as establishing such factual basis?

14 MR. STEWART: I have reviewed that report with my
15 client. If Your Honor please, we accede to the contents
16 in it and we would stipulate there's a factual basis.
17 Yes, sir.

18 THE COURT: Ms. Randall, does the government so
19 stipulate?

20 MS. RANDALL: So stipulated, Your Honor.

21 THE COURT: Based on the stipulation of the
22 parties and the evidence as set forth in the presentence
23 report, which report was previously reviewed by the
24 Court, and based upon the defendant's admission of guilt,
25 the Court finds, concludes and confirms that there is a

1 factual basis for the defendant's plea. Accordingly, the
2 Court confirms the magistrate judge's acceptance of the
3 defendant's guilty plea. This court accepts the
4 defendant's plea of guilty, finds the defendant is
5 guilty, and enters thereon a verdict and judgment of
6 guilty.

7 Ms. Tipton, there is a document that has been
8 prepared. I see that your attorney is showing you a copy
9 there at your table. On the upper left-hand side it has
10 a caption that reads, "United States of America versus
11 Deborah Lee Tipton." On the upper right-hand side it has
12 a title that reads, "Presentence Investigation Report."
13 Have you had an opportunity to review this document
14 before today?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Have you had an opportunity to review
17 it with your attorney?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Do you understand the contents of that
20 document?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Stewart, have you had an
23 opportunity to review the presentence report with
24 Ms. Tipton?

25 MR. STEWART: I have, Your Honor.

1 THE COURT: Are you satisfied that Ms. Tipton
2 understands the contents of the presentence report?

3 MR. STEWART: Yes, sir.

4 THE COURT: Thank you. Ms. Tipton, you may take
5 your seat.

6 With regard to the presentence report, as I
7 mentioned earlier, there were many objections to the
8 presentence report. I have reviewed those objections. I
9 have reviewed the documents that have been submitted in
10 support of those objections. Mr. Stewart, are there any
11 of those that you wish to be heard on further?

12 MR. STEWART: Your Honor, please, there are just a
13 couple I would like to speak to. We filed, as Your
14 Honor's already noted, a number of objections with far
15 greater detail, sometimes more duplicity than we should
16 have, so I'm not going to waste the Court's time any
17 further. But let me call a couple of items just to Your
18 Honor's attention that were actually in our objections,
19 specifically, the objections I filed on behalf of
20 Ms. Tipton as opposed to those filed by co-counsel, Mr.
21 Jackson.

22 In paragraph seven I brought to the Court's
23 attention on page eight, paragraph 25 of the presentence
24 report. I wanted the Court to understand in very plain
25 terms that Debbie Tipton has never denied recording the

1 victim in this case on the videotape that has been shown
2 or previewed by the Court. You've actually seen two
3 segments of the videotape. I think the evidence is that
4 it was actually a single taping session. It was
5 interrupted by an attempt by Ms. Tipton to try to clean
6 the lens of the camera. But that being said, I want the
7 Court to also understand that Ms. Tipton had reason to
8 believe shortly after that recording, and a previewing of
9 that same tape both by the victim and my client, that
10 that recording had been deleted. That was her initial
11 belief at the time. She has repeated that throughout the
12 multiple filings we've had with this court. And as I
13 recall, I think that was also the understanding or the
14 belief of the victim at the time, too, that it had been
15 deleted. Obviously, that was not the case. I think the
16 facts in this case bear out that that was a
17 misunderstanding. But I wanted to call that to the
18 Court's attention.

19 Item number ten in my objections, if Your Honor
20 please, and I'm speaking specifically to page 12,
21 paragraph 46 of the presentence report. I guess in
22 common parlance I was really just quibbling with the age
23 factor. Mr. Jackson addressed this same issue in his
24 objections on objection five. Now we use that arbitrary
25 number of 12 years old, as the guideline reports, as sort

1 of a line in the sand where a four level enhancement is
2 ordinarily added. We're not arguing with the fact that
3 the victim was not quite 12 at the time, but she was
4 about as close to 12 -- I think she was -- I think she
5 was 11 years, and maybe a month away from being 12 at the
6 time it happened.

7 Obviously, the investigation of this case, the
8 prosecution of this case, the guilty plea that was
9 entered by my client. All of those events up to this
10 very day have presented the victim to the court at the
11 age of 12 or over the age of 12. But at the time the
12 recording was undertaken, while I do not argue or
13 controvert the fact that she was just shy of 12 years,
14 old she was not yet 12.

15 The last item I want to call --

16 THE COURT: Let me ask you, though, Mr. Stewart.
17 In terms of your objection to the presentence report,
18 what difference does that make? At this point, this
19 portion of the presentence report is for the technical
20 determination of what is the offense level, what is the
21 criminal history category, and whether it makes sense or
22 doesn't make sense. 2(g)(2.1)(B)(i)(a) says if the
23 victim is under the age of 12 then the four level
24 enhancement applies. So, what are you objecting to?

25 MR. STEWART: If Your Honor please. I wanted the

1 Court to know, I guess, how close we were to that line.
2 I'm not arguing, in good faith, that the Court should not
3 apply it. That's a pretty significant enhancement to any
4 sentencing, to add four points to it. Your Honor's aware
5 of that. There's a reason for that, and I understand
6 what the reason is by the Sentencing Commission. I just
7 wanted the Court to be aware of the fact that the victim,
8 at the time this offense happened, and while we recognize
9 she was not yet 12, she was about as close to 12 as you
10 can get. I understand that.

11 If Your Honor please. And as far as that's
12 concerned, you'll get the opportunity to argue for what
13 the appropriate sentence is. Right now we're on the
14 issue of the objections to the presentence report, so I'd
15 like for you to confine your arguments to the objections
16 to the presentence report. Quibbling with what the
17 sentencing guidelines say or don't say, you can put that
18 in a letter to the Sentencing Commission. Right now
19 let's keep the argument limited to your objections to the
20 presentence report, please.

21 MR. STEWART: If Your Honor please. The last
22 point I want to argue or call to the Court's attention is
23 where paragraph 11 deals -- paragraph 12, the page where
24 we contested the two points enhancement about the offense
25 involving the distribution of child pornography. I want

1 the Court to understand what we were contesting there
2 really had to do with the explanation or the labeling of
3 what my client did, without whether that actually
4 constituted child pornography or not. There was no
5 question that what she did was videotape a minor, or a
6 young person who was involved in some sort of sexually
7 explicit conduct, I think, is the actual term of art
8 that's used, both in the statute and in the guilty plea
9 that we entered into.

10 The term "child pornography," as Your Honor knows,
11 has a separate and a different meaning by the definitions
12 in Section 2258. And while I do not understand all of
13 the differences of those distinctions, there is a
14 distinction between child pornography and what my client
15 has admitted doing, entering a guilty plea before, and
16 stands before this Court for sentencing.

17 I wanted Your Honor to know, and I wanted to make
18 it abundantly clear, that she does not deny the recording
19 or the possession or the transmission/distribution,
20 however you choose to characterize that of the videotape
21 she made. She doesn't deny that at all and never has.
22 The issue was whether or not that videotape constituted
23 child pornography. There's no question in my mind that
24 it constitutes a visual depiction of minors engaged in
25 sexually explicit conduct which is exactly what she was

1 charged with in and has entered a guilty plea to. And no
2 matter how minor that distinction may be, it is a
3 distinction recognized in the statute and I was simply
4 trying to call that to the Court's attention.

5 THE COURT: Okay.

6 MR. STEWART: If Your Honor please, that would be
7 the only objections. I think a number of other
8 objections were filed, as Your Honor's noted, and many of
9 those have been corrected or amended in the revised
10 presentence report prepared and submitted by Mr. Woo.
11 The other objections, many of which are academic -- and
12 that may be a stretch of that word, but they are academic
13 in nature. I don't think the Court needs to hear any
14 further argument from the defendant.

15 THE COURT: Okay. Thank you, Mr. Stewart.

16 With regard to those objections. First of all,
17 with regard to the objection in paragraph 47. There the
18 two point enhancement is for whether or not the offense
19 involved distribution. Yes, paragraph 47 refers to
20 distribution of child pornography as a shorthand term
21 rather than distribution of a visual depiction of a minor
22 engaged in sexually explicit conduct, but the question
23 regarding the enhancement is whether or not it is a
24 distribution offense. As articulated by counsel, the
25 defendant admits that it is a distribution offense and,

1 therefore, the objection is overruled. The two level
2 enhancement applies.

3 Likewise, with regard to paragraph 46. That is a
4 four level enhancement that applies if the victim has not
5 yet attained the age of 12 years. It is admitted by the
6 defendant in this matter that the victim in this case had
7 not yet attained the age of 12 years and, therefore, the
8 four level enhancement does apply. The objection to
9 paragraph 46 is overruled.

10 With regard to the other objections -- and there
11 were voluminous objections in this matter. As
12 Mr. Stewart says, they are of an academic nature. I've
13 gone through all of them, and all of those objections to
14 the presentence report are overruled.

15 Ms. Randall, I believe that you have filed
16 something just recently with regard to the three level
17 reduction for acceptance of responsibility in paragraphs
18 54 and 55. Do you wish to be heard further regarding
19 that issue?

20 MS. RANDALL: Your Honor, just to add to what I
21 wrote in the sentencing memorandum. The defendant --
22 there were multiple examples of the defendant denying
23 each and every element of the case from her knowledge to
24 -- and intent to what the video actually depicted. Even
25 after she entered her guilty plea, Your Honor, she was

1 going through her evaluations and she was still saying I
2 did not send this video; this video was not sexual. The
3 whole purpose of someone receiving those points is where
4 someone clearly accepts responsibility. All of her
5 conduct, Your Honor, and throughout her filings, she
6 continuously denies it.

7 Even today, Your Honor, she's standing up and
8 saying I thought I deleted those videos. How could she
9 knowingly possess a video, Your Honor, and how can she
10 accept responsibility for knowingly possessing and
11 sending a video when she's still saying I thought I
12 deleted those videos? She's denied every single element
13 except for the fact that she took the video and that it
14 involves interstate commerce. This is clearly an example
15 where the defendant should not receive acceptance of
16 responsibility.

17 I won't go through all of the bullet points that I
18 have in my sentencing memorandum, Your Honor, but there
19 were numerous examples of her denying responsibility for
20 her conduct. We would join with Probation's assessment
21 that she has not accepted responsibility for her offense.

22 THE COURT: Thank you.

23 Mr. Stewart, do you want to respond to that?

24 MR. STEWART: Your Honor, please. Section 3E1.1
25 of the guidelines provides that -- it tries to give the

1 Court, I think, some direction in determining whether any
2 defendant -- not just Deborah Tipton, but any defendant
3 appears before the Court and has accepted responsibility.
4 There's some criteria set out there. Some of the
5 criteria are, first, that the defendant truthfully admits
6 her conduct. The defendant sort of owns up, so to speak,
7 to what they did that was criminally wrong.

8 The Court can consider whether that individual
9 defendant has withdrawn where from that conduct is no
10 longer participatory or involved, whether that individual
11 has given assistance to the authorities of their own
12 conduct or conduct of others, and whether that assistance
13 is timely. Those are just a few of the considerations
14 that I think applicable with the facts before this court.

15 Deborah Tipton, if Your Honor please, has shown
16 contrition from what she's done. She's not avoided this.
17 I think there has been a great question in her mind,
18 certainly at the time she was arrested and taken into
19 custody, about how that video even existed. She told the
20 investigators from the first time she was interviewed
21 that she thought that had been deleted from her computer.
22 You know from some of the filings in this case that she
23 was embroiled and involved in a heavily contested
24 domestic case. Her ex-husband had access to her personal
25 computer and had hacked into that computer and literally

1 taken that computer to a third party source to review it
2 and examine the contents and duplicate it.

3 She didn't know if this was something that was retrieved
4 from a deleted file. Even to this day we have not been
5 able to positively reconstruct it through the use of our
6 own forensic expert how.

7 THE COURT: Let me ask you this, Mr. Stewart.

8 MR. STEWART: Yes, sir.

9 THE COURT: How is the statement that the
10 defendant believed that the video files had been deleted,
11 how is that consistent with the defendant admitting that
12 she in fact had transmitted those video files to
13 Mr. Hamby?

14 MR. STEWART: If Your Honor please.

15 THE COURT: Is that not factually inconsistent?
16 If she says I thought I deleted it right after this was
17 created, but in reality she says I admit that I
18 transmitted it later to Mr. Hamby. It seems like those
19 two cannot exist in the same universe.

20 MR. STEWART: Let me argue to Your Honor why I
21 think that's not inconsistent. She did in fact send
22 other videos to Mr. Hamby, videos not of the nature of
23 the one Your Honor's had a chance to review. She
24 remembers transmitting those and remembers making those
25 and sending those, just as she remembers recording the

1 ones that are the subject of this prosecution that she
2 and, evidently, the victim in this case also thought were
3 deleted. She does not deny making it nor transmitting
4 it. She is just not certain how it was transmitted. She
5 has reason to believe, as we do representing Ms. Tipton,
6 that that was sent at a time and a place when she sent
7 other videos of herself to Mr. Hamby in this case.
8 That's the uncertainty of it, Your Honor. It's not that
9 we deny sending it and not that we deny making it. We
10 thought that one had been deleted. But we sent other
11 videos along with this one, and we can only assume that's
12 how it was transmitted and that's how it was sent and
13 that's what she did. She's owned up to that.

14 Now, what we've not attempted to do is to say,
15 well, we know it was deleted and we know it was
16 transmitted by some other source or some other person, so
17 we're not responsible for that. We've not said that. We
18 don't believe that. But this is something -- this is a
19 notion, if Your Honor please, that we have evolved to
20 since we were first investigated about these charges and
21 first initially charged. This is something we could not
22 answer directly at the time of the arrest. This is
23 something we had to have our own forensic expert
24 reconstructing before we could make some sense of how it
25 was transmitted originally, Your Honor please.

1 I'm not trying to beg the Court's attention in on
2 this. I want you to know there were other documents that
3 were sent or other transmissions that were made to this
4 same individual at or about the same time as this one.
5 And what we -- what we surmise is that we sent this along
6 with some of those. So they're during the same period of
7 time to the same recipient. But at the time it was made
8 and the time it was initially shown, it was previewed by
9 the defendant and the victim. We thought it -- we
10 genuinely thought it had been deleted at the time, and I
11 think the victim thought the same thing at that time.

12 If Your Honor please. We obviously know that is
13 not accurate and that is not what happened, because that
14 was -- if that was what happened, we wouldn't be here
15 today. Does that affect the fact that she's been charged
16 with this offense and entered a guilty plea to this
17 offense and owned up to it? I don't think so. I don't
18 think that affects the fact that she has shown contrition
19 for her actions that she comes before this court
20 accepting responsibility for what she's done and standing
21 before the Court to be sentenced today. That was her
22 genuine belief at the time it was done.

23 THE COURT: Okay. Anything further?

24 MR. STEWART: No, sir.

25 THE COURT: Thank you. Ms. Randall.

1 MS. RANDALL: Your Honor, I would just say in
2 response to that that if she accidentally sent the video,
3 then she's not guilty of this crime. The elements, as
4 explained to her by Judge Howell, was that she had to
5 knowingly, willfully and lawfully send a video depicting
6 a child engaged in sexually explicit conduct. For her to
7 be guilty of that, she has to know she sent it. If she
8 did it by accident while sending other videos, if that's
9 what her position is, she is not owning up to the
10 elements, Your Honor. And this is not simply only that
11 element; it's every element, Your Honor.

12 Even after she pled guilty, she's still submitting
13 documents to this court and to her psychiatrist during
14 her evaluation saying maybe my husband did it to frame
15 me. Maybe I accidentally did it. I don't remember doing
16 it. She's still saying it's not child pornography.
17 They're arguing to Your Honor that there was no lewd,
18 lascivious or sexual actions. They're asking the Court
19 to view the images and that there's a complete absence of
20 anything of a sexual nature and that Ms. Tipton deemed
21 the videos strictly educational is debatable as to
22 whether the videos in question even meet the definition
23 of pornography.

24 Your Honor, these are pure anatomy showing the
25 labia and vagina with no averse sexual action depicted.

1 Those are the documents they're using to argue for her
2 variance, Your Honor, and these are all not showing
3 acceptance of responsibility and not showing contrition.
4 She's still saying I didn't do it. I did this for an
5 educational reason and I accidentally sent it. If both
6 those things are true, Your Honor, then she should have
7 pled not guilty.

8 THE COURT: Mr. Stewart, does the defendant admit
9 that she knowingly transmitted this video to Mr. Hamby?

10 MR. STEWART: Yes, sir, and that has never been
11 denied. The uncertainty of when she did it or how she
12 did it was a question that she raised at the time of her
13 arrest, but she does not deny either recording or the
14 transmission of this. That is not an issue by the
15 defendant.

16 MS. RANDALL: Does she admit it is a child
17 engaging in sexually explicit conduct?

18 MR. STEWART: Yes, and --

19 MS. RANDALL: And she knew it was that when she
20 transmitted it?

21 MR. STEWART: Yes. We admit the film depicts
22 minors engaged in sexually explicit conduct; that was not
23 denied. Now, whether there was the equivalent or same
24 and in common parlance to child pornography there was a
25 question I raised in my objection to the presentence

1 report regarding --

2 MS. RANDALL: Did she know she was sending a video
3 of a child engaged in sexually explicit conduct?

4 MR. STEWART: She knew that she was sending the
5 video that was transmitted to Mr. Hamby of her daughter
6 that she took involved in that conduct. Yes, sir.

7 MS. RANDALL: Your Honor, that's not accepting the
8 elements of the crime. That's parsing it, Your Honor.
9 She has to have known she sent a video depicting the
10 minor. She has to know what video she sent to be guilty
11 of this crime. She's still saying it was an accident.

12 MR. STEWART: Judge, she's not saying that was an
13 accident. And, you know, for the government to ascribe
14 the reason that she pled guilty -- there are lots of
15 reasons for someone to enter a guilty plea, even upon
16 their own acceptance and admission of guilt. I don't
17 mind telling the Court very candidly that one of the
18 reasons we negotiated the guilty plea in this case was to
19 avoid any further trauma or any further exposure or
20 embarrassment for the child involved in this case. That
21 was one of the reasons.

22 I mean, there were a lot of reasons to enter the
23 plea that was done here. But the fact that we did that
24 with other reasons in mind or other motivations does not
25 mitigate the fact that we have accepted responsibility

1 for what we've done. She has never been interviewed a
2 single time that I am aware of by anyone associated, at
3 least in law enforcement and the investigation or
4 prosecution of this case, where Debbie Tipton said
5 huh-uh, it wasn't me. I didn't do it. She hasn't tried
6 to step away from that. She has tried, to the best of
7 her knowledge, if Your Honor please, to explain it and to
8 determine how it happened.

9 She has not shied away from the fact that, as she
10 appears before this court today, she has admitted her
11 guilt. She is contrite. She is apologetic. She is
12 remorseful for what she's done. I, frankly, cannot
13 imagine any person being more remorseful than the
14 defendant in this case, given the relationship that
15 existed before the time of the charging and where we have
16 evolved to now 17 months later.

17 THE COURT: Okay. With regard to this issue of
18 the question of responsibility. I actually find this
19 issue to be somewhat difficult, because the first thing I
20 have to do is I have to draw the line between what the
21 defendant admits to and then some of the statements that
22 have been made on her behalf by others which I don't
23 necessarily attribute to the defendant. As I mentioned
24 before, there was a multitude of filings by the attorneys
25 in this case. Some of the filings on behalf of the

1 defendant certainly give rise to a serious question as to
2 whether there is an acceptance of responsibility or
3 whether the defendant remains in sheer and utter denial
4 of her own criminality. However, I can put those aside
5 as the statements of counsel as opposed to the statements
6 of the defendant.

7 I still find even the degree of parsing that I am
8 hearing today as very, very troubling because it does
9 show a certain level of remaining in a state of denial.
10 However, in light of the specific representations made
11 here, I believe that the defendant has admitted and
12 confessed to each and every one of the elements of the
13 crime involved and that the three level acceptance of
14 responsibility -- excuse me, the two level acceptance of
15 responsibility does apply here. That, of course, raises
16 the question of whether or not the government is making a
17 formal motion for the additional level under 3E1.1B.

18 Ms. Randall, what says the government as to that?

19 MS. RANDALL: If Your Honor has found she clearly
20 accepts responsibility, the third level is -- I believe
21 Your Honor does not address acceptance of responsibility
22 as to whether she entered her plea in a timely manner and
23 prevented us from prepping for trial. So I do not think
24 that we can object to the application of that, Your
25 Honor.

1 And if Your Honor wouldn't mind me just being
2 heard on one further thing. Based on your ruling, I
3 would just note for the record that the government's
4 argument is based on Mrs. Tipton's own words, what she
5 told the psychiatrist. Even if you take out everything
6 that her attorneys have said, she told her psychiatrist
7 -- Mrs. Tipton stated several times during the interview
8 that she'd never been aware she was sending the videos.
9 She expressed confusion she was sending the videos. She
10 was unsure if she accidentally sent the videos. These
11 are all her words. Ms. Tipton denies intentionally
12 sending the videos. That's what she told the
13 psychiatrist, whose report they're asking you to rely on,
14 Your Honor. So it's not just what her attorneys are
15 telling Your Honor in the argument; it's what she
16 actually said to people about her case.

17 THE COURT: Well I've made my ruling as to that
18 matter and that will stand.

19 Are there any other issues regarding the
20 presentence report that need to be addressed? Any
21 further for the defendant, Mr. Stewart?

22 MR. STEWART: Not from the defendant, if Your
23 Honor please.

24 THE COURT: Any for the government, Ms. Randall?

25 MS. RANDALL: No, Your Honor.

1 THE COURT: Therefore, the Court will accept the
2 presentence report as written and therefore will find
3 that the total offense level in this case is 37, and the
4 criminal history category in this case is one. Based on
5 that total offense level and criminal history category
6 the Court will conclude, as a matter of law, that the
7 guideline range for this case is 210 to 262 months of
8 incarceration.

9 Mr. Stewart, did I calculate that correctly?

10 MR. STEWART: Yes, sir, you did.

11 THE COURT: Ms. Randall, do you agree?

12 MS. RANDALL: Yes, Your Honor.

13 THE COURT: Based on the discussions that we had
14 in chambers concerning the procedure for going forward,
15 Ms. Randall, I understand that the government wishes to
16 present some evidence with reference to sentencing before
17 we move on to any arguments. Is that correct?

18 MS. RANDALL: Yes, Your Honor. We just want to
19 briefly present a witness in order to establish the basis
20 of our -- some of the other facts that we argued in our
21 sentencing memorandum that were not in the PSR.

22 THE COURT: Call your first witness.

23 MS. RANDALL: The government calls Agent John
24 Wydra.

25 THE COURT: Come forward to be sworn.

1 (Witness duly sworn at 10:48 a.m.)

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MS. RANDALL:

5 Q. Can you please state your name and where you work?

6 A. John Wydra. I'm a Special Agent with the FBI.

7 Q. And what type of cases do you work at the FBI?

8 A. Crimes against children.

9 Q. And how long have you been working in that
10 capacity?

11 A. The second time since 2010, and I had worked in
12 that capacity in 2004 through 2006.

13 Q. And in your role as an FBI agent, were you
14 involved in the investigation of the defendant?

15 A. I was.

16 Q. And are you familiar with all the documents and
17 evidence in this case?

18 A. I am.

19 Q. And as part of your investigation, did you
20 interview Chad Bloom?

21 A. Chad Hamby.

22 Q. Sorry. Chad Hamby. Thank you.

23 A. Yes.

24 Q. And when did that interview take place?

25 A. It was July 13th 2012.

1 Q. And at that time, who was present for the
2 interview?

3 A. It was myself, Chad Hamby, Detective Anderson, and
4 Chad's attorney.

5 Q. And was Mr. Hamby -- did Mr. Hamby talk to you
6 about his role in the offense that we're here for today?

7 A. He did.

8 Q. And did he talk to you about his relationship with
9 the defendant?

10 A. He did.

11 Q. What did he tell you about who initiated the
12 extramarital affair?

13 A. He said that it was Deborah Tipton. That they had
14 this affair over a seven-year period, and that it
15 progressed over that period of time to more of a
16 fantasy-type of relationship.

17 Q. And what do you mean by that?

18 A. Well, how he described it is that it started to
19 move online. In the beginning it was all face-to-face
20 type conversations, and then it started to be on Facebook
21 and Facebook chats. Then it started to involve what he
22 described as darker and darker fantasies.

23 Q. When you describe "darker and darker fantasies,"
24 what are you talking about?

25 A. He said it was just normal. It all started out as

1 just normal sex chat, and then it moved into bestiality
2 and children.

3 Q. And did he say approximately when they started
4 having these fantasies about children?

5 A. He said it was about three years prior to him
6 receiving the videos, and that they had discussed
7 multiple violent type sex acts with children over that
8 three-year period.

9 Q. And when you say "they," you're referring to
10 Mr. Hamby and who?

11 A. Deborah Tipton.

12 Q. Did he say who would come up with these fantasies?

13 A. He said it was mostly Deborah Tipton and that she
14 did that to excite him and to sexually arouse him so that
15 later on that they could meet and have sex.

16 Q. And according to Mr. Hamby, did the victim in
17 this case ever become a part of those fantasies?

18 A. Yes.

19 Q. Who introduced the victim into their fantasy
20 chats?

21 A. Deborah Tipton.

22 Q. At some point, did the relationship between
23 Mr. Hamby and Ms. Tipton start slowing down or fizzle
24 out?

25 A. It was shortly -- according to Chad Hamby, it was

1 shortly after he had received the videos of Deborah's
2 daughter.

3 Q. Did Mr. Hamby -- in talking about what
4 Mrs. Tipton and he discussed, did she ever talk to him
5 about the victim in this case with regards to bathing or
6 showering?

7 A. Yes. She had described that you should see how
8 she's maturing. She's getting older now. And this was
9 in reference to Chad Hamby having told Deborah Tipton
10 that he had downloaded child pornography years earlier
11 through something called LimeWire and how excited that
12 had made him. He felt that she was trying to feed that
13 fantasy.

14 Q. And at some point, Ms. Tipton sent Mr. Hamby a
15 video?

16 A. Yes.

17 Q. In terms of receiving that video. What did
18 Mr. Hamby say about any notification or warning he may
19 have gotten from Mrs. Tipton prior to receiving that
20 video?

21 A. He had received a text message prior to that that
22 said I have a surprise for you. Deborah Tipton had sent
23 that text message saying she had a surprise for him. He
24 said he knew right away, when he received that text
25 message, what that video was going to be.

1 Q. And back it up one step. When she told him, you
2 should see how the victim is developing, you should see,
3 you know, how she's maturing, what did Mr. Hamby say in
4 response to that?

5 A. He knew that it was going to be child pornography
6 similar to what he had seen in the past on Limewire.

7 Q. And did he request her to send them to him?

8 A. He did.

9 Q. Prior to her raising the information that she --
10 about the victim developing, had Mr. Hamby asked for her
11 to send him videos of the victim in the shower? Did that
12 make sense? I can reword that.

13 A. Yeah, if you could.

14 Q. But for -- according to Mr. Hamby, but for
15 Mrs. Tipton telling him about the victim in this case and
16 the videos she had of her in the shower, would Mr. Hamby
17 have requested the videos, according to him?

18 A. Well, there were numerous sexual fantasy
19 conversations over that three year period, and it
20 culminated into this video of the victim. And then when
21 he had learned that that video existed, he asked for
22 Ms. Tipton to send it to him.

23 Q. You said that she sent him a message that she had
24 a surprise waiting for him. Did she say anything else to
25 him about viewing the video prior to him looking at the

1 video?

2 A. Yeah. He had said that she wanted to be there
3 when he watched it so that she could sit on his lap and
4 feel him get hard.

5 Q. And when the video was sent to Mr. Hamby, was
6 there any sort of header or, you know, label on the
7 video?

8 A. Yeah. The subject said "Enjoy," the subject line.

9 Q. And is that consistent with Ms. Tipton -- what
10 Mrs. Tipton had said she typed in when she sent the video
11 to Mr. Hamby previously?

12 A. Yeah. On February 21st 2012, Ms. Tipton, in her
13 interview, said that she believed she sent that video
14 with the title enjoy.

15 Q. And what did Mr. Hamby say was the purpose of
16 Mrs. Tipton sending him the video?

17 A. It was for his sexual gratification and to feed
18 their -- and continue to feed their fantasies about
19 children.

20 Q. I'm going to show you what I previously marked as
21 Government's Exhibit 1. Do you recognize that?

22 A. Yes.

23 Q. And is it a CD containing the videos that
24 Mrs. Tipton sent to Mr. Hamby?

25 A. Yes.

1 Q. Your Honor, the government would move to introduce
2 Exhibit 1 into evidence, just for the record.

3 THE COURT: Okay. Let it be admitted.

4 (Whereupon, Government's Exhibit No. 1
5 was admitted into evidence without
6 objection.)

7 BY MS. RANDALL:

8 Q. Are you previously examined Government's Exhibit
9 1A and 1B which are transcripts?

10 A. Yes.

11 Q. Do those transcripts accurately reflect the
12 conversations that were on the videos in Government's
13 Exhibit 1?

14 A. Yes.

15 Q. Your Honor, the government would move Exhibits 1A
16 and 1B into evidence.

17 THE COURT: Any objection to that, Mr. Stewart?

18 MR. STEWART: No, sir, Your Honor.

19 THE COURT: Okay. Let it be admitted.

20 (Whereupon, Government's Exhibits No. 1A and
21 1B were admitted into evidence without
22 objection.)

23 BY MS. RANDALL:

24 Q. I'm going to show you what I've marked as
25 Government's Exhibit 2. Do you recognize Government's

1 Exhibit 2?

2 A. I do.

3 Q. Can you tell me what it is?

4 A. Yeah. This is the transcript of the Deborah
5 Tipton interview I referred to earlier dated February
6 21st 2012.

7 Q. And does this transcript fairly and accurately
8 represent the audio recording that was made of that
9 interview of Ms. Tipton?

10 A. It does.

11 Q. Your Honor, the government would move Exhibit 2
12 into evidence.

13 THE COURT: Any objection, Mr. Stewart?

14 MR. STEWART: No objection, Your Honor.

15 THE COURT: Let it be admitted.

16 (Whereupon, Government's Exhibit No. 2
17 was admitted into evidence without
18 objection.)

19 BY MS. RANDALL:

20 Q. Going back to prior to the video being sent. at
21 some point ,did Mr. Hamby move to another school?

22 A. He did. It was sometime in May 2011. He had left
23 the school that he had worked at with Ms. Tipton.

24 Q. And how did that affect his relationship with
25 Ms. Tipton?

1 A. It almost brought it to a halt. They didn't see
2 each other. They got wrapped up in different things.
3 The relationship had slowed from May 2011 until it
4 started ramping back up in August 2011 through September,
5 when Ms. Tipton sent the videos.

6 Q. No further questions, Your Honor.

7 THE COURT: Cross-examination.

8 **CROSS-EXAMINATION**

9 BY MR. STEWART:

10 Q. Agent Wydra, good morning.

11 A. Yes, sir.

12 Q. The information you shared with us that you
13 learned from interviewing Mr. Hamby. You have never
14 interviewed Ms. Tipton, have you?

15 A. No.

16 Q. You've never taken a statement from her or
17 confronted her or asked about this information that's
18 shared with you by Chad Hamby. Correct?

19 A. That's correct.

20 Q. We met one time in Charlotte in the investigation
21 of this case sometime ago and you showed us a bevy of
22 computers and -- excuse me, I lack of nomenclature to
23 describe what you do. But among other things you do is a
24 forensic analysis, I believe, of hardwares and softwares,
25 programs and things of that nature. Is that correct?

1 A. The FBI does. I don't do the computer forensics.
2 I'm the investigator. We have a team that does that for
3 me.

4 Q. You were certainly involved in the receipt and
5 interpretation of all the hardware and software in this
6 case. I know you shared a lot of that information with
7 Ms. Tipton's counsel over the last year, year and a
8 half. Is that accurate?

9 A. Yes.

10 Q. In this case, besides the Government's Exhibit No.
11 1 that was marked and shown in chambers earlier today,
12 that one disk, you also had before you a computer, a hard
13 drive and things of that nature that were all ascribed to
14 my client, to Ms. Tipton. Those were also available to
15 the FBI, were they not, in this investigation?

16 A. Available to the FBI? Yes.

17 Q. And a complete forensic work-up, a complete and
18 thorough forensic examination, was done of all of the
19 electronic devices that was presented to your office
20 either by her estranged husband, Joe Tipton, and devices
21 that came from the school that Deborah Tipton had access
22 to: a FlipShare camera that may or may not have been
23 owned by the school but that Chad Hamby had at some
24 point. Those are just a few of the many examples of
25 devices made available to you and your bureau for

1 forensic examination; is that correct?

2 A. Yes, sir.

3 Q. Is it accurate to say that in the complete
4 examination done of all of those devices over the last
5 year and a half that the FBI has not found any other
6 photographic evidence of any minors engaged in any sort
7 of elicited activity other than what has been depicted on
8 Government's Exhibit 1 here today? Is that right?

9 A. That's correct.

10 Q. With respect to this information Chad Hamby shared
11 with you about the course of their relationship and that
12 over the last three years they began to engage in this
13 discussion involving fantasy talk that turned more
14 unusual. Is it fair to say you found, in your review of
15 all the devices and all the information provided in
16 Ms. Tipton's case, no evidence of any sort of talk
17 involving minors?

18 A. Correct. We did not.

19 Q. Is it also fair to say that in your examination of
20 all those devices that you have never found any e-mails,
21 any text messages or anything that corroborates what Chad
22 Hamby has led you to believe was this discussion he
23 claims Deborah Tipton instigated or started with respect
24 to the progression of these fantasy discussions he would
25 have with her? Is that correct?

1 A. That's correct.

2 Q. No evidence at all from any of the devices
3 examined by your bureau over the last year and a half.
4 Right?

5 A. From the devices? Correct.

6 Q. Is that correct? Now, Chad Hamby led you to
7 believe that the elicited relationship he had -- Mr. Hamby
8 was also married at the time, was he not?

9 A. I'm sorry. Say that again.

10 Q. Pardon?

11 A. Mr. Hamby -- I didn't hear the last word.

12 Q. Mr. Hamby was also married at the time, was he
13 not?

14 A. Yes.

15 Q. As was Ms. Tipton?

16 A. Yes.

17 Q. But he led you to believe that relationship the
18 two of them struck up some years ago was largely
19 Ms. Tipton's doing and that it was all sort of on her.
20 Is that correct?

21 A. If that's what I implied, that's not what I
22 intended. I'm telling you that Mr. Hamby felt that the
23 relationship started with Mrs. Tipton. And he clearly
24 states throughout the entire interview that he's to blame
25 and that he shares this blame and where this has led to

1 and that he was being very selfish; that it was about his
2 sexual gratification. He just did not feel that he was
3 in love with Mrs. Tipton, that it was purely a sex-based
4 thing, and he believed that she felt the same way.

5 Q. Well, at least from his point of view, he led you
6 to believe this was purely a sexual relationship. Right?

7 A. Correct.

8 Q. And he engaged in this relationship with my client
9 purely for his own sexual gratification, at least from
10 his point of view. Is that what he led you to believe?

11 A. Yes, sir.

12 Q. He revealed to you, did he not, that at some point
13 during the course of that relationship he had instructed
14 Ms. Tipton to install this Limewire program on her
15 computer? I think it was a computer at the school; is
16 that right?

17 A. I don't believe it was the computer at school. I
18 believe it was a computer that he had owned at his
19 residence that had long since crashed and he could no
20 longer have in his possession.

21 Q. That was a computer he had provided her with,
22 though, right?

23 A. That I don't know. I'm not aware of that.

24 Q. I'm sorry?

25 A. Yeah. I'm unaware of that if that's what

1 happened.

2 Q. Do you know if he was the one that instructed her
3 how to put this Limewire program on that computer? Do
4 you know that?

5 A. He had said during the interview that he had
6 stopped using Limewire because he had heard that it was
7 illegal and that he had stopped using it four or five
8 years prior. So, instructing Ms. Tipton? I don't
9 recall him saying that.

10 Q. You are concerned, as an investigator in this area
11 of investigations, about Limewire being used, are you
12 not? Because you know how that's utilized in the porn
13 industry, is it not?

14 A. It used to be. When I first worked crimes against
15 children, Limewire was very prevalent. Now it's not.

16 Q. So you're not saying he didn't provide her with
17 the computer or didn't instruct her or really direct her
18 to install this program so she could access various
19 things. You're saying he just didn't reveal that to you.
20 He didn't tell you that.

21 A. He didn't tell me that. No, sir.

22 Q. All right. Did he tell you about the fantasies
23 that he introduced into this relationship not just
24 involving minors but fantasies involving bondage and
25 voyeurism?

1 A. Yes.

2 Q. Did he tell you about the fantasies that he
3 injected into this relationship that involved even rape
4 scenarios? Did he tell you about that?

5 A. He said that the rape scenarios were introduced by
6 Ms. Tipton.

7 Q. He said that came from her and not from him?

8 A. Correct.

9 Q. Did he tell you about the notions that he injected
10 into this relationship involving looking at and viewing
11 young females?

12 A. Yes, he did say that.

13 Q. He actually admitted that he'd been doing that on
14 the Internet, I think, for about three to five years. Is
15 that right?

16 A. He said he did it three to five years ago and that
17 he had told Ms. Tipton about that and that that's what
18 changed their sex fantasies from more of the bondage and
19 bestiality over to include children and more of the
20 violent rape fantasies.

21 Q. And he told you that he was previewing on the
22 Internet through whatever program was available these
23 young females between the ages of, what, 13 and 15 years
24 old, and that that had been ongoing even before he met
25 Ms. Tipton?

1 A. Actually, he admitted that it was as young as 12
2 during that interview. And he had said that he had done
3 that with Limewire prior to -- like I said, up to five
4 years prior to the videos being sent. But their
5 discussion of that time frame in his life was revolving
6 around when the videos were sent.

7 Q. Now, with respect to what you found and were able
8 to determine from your investigation of Ms. Tipton.
9 There was no Limewire recordings that were found, there
10 were no videos of minors in any fashion, and there
11 certainly was no discussion at any point between
12 Mr. Hamby and Ms. Tipton about his interest or his
13 predilection in young minors. There was nothing found.

14 A. Correct. There was no evidence of that found on
15 the devices.

16 Q. Was it Chad Hamby who told you that the purpose
17 for being involved in the relationship with Deborah
18 Tipton and, really, the interest he had in young persons,
19 particularly the victim in this case, was for his own
20 sexual gratification? Is that what he told you?

21 A. Yes.

22 Q. Did you find any sort of evidence, any sort of
23 indicators, aside from what Chad Hamby led you to
24 believe, that Deborah Tipton had some sort of sexual
25 gratification in that same area?

1 A. He described her sexual gratification on getting
2 him excited. Like, it fed on each other. Her sexual
3 gratification came from getting him sexually aroused,
4 whatever that would do for him.

5 Q. And that's what he told you?

6 A. Yes.

7 Q. Now, he told you that at or about the same time of
8 the subject video that we're dealing with here,
9 Government's Exhibit No. 1, that he had asked -- really,
10 he had implored Ms. Tipton to make some videos of
11 herself. Would that be a fair statement?

12 A. He said that she often sent videos of herself
13 masturbating and that he had done it on at least one or
14 two occasions himself.

15 Q. Yes, sir. Did he tell you that he had asked -- he
16 had made that specific request of her?

17 A. He didn't deny it. He said that it was a back and
18 forth type of thing. It was a very exciting for them to
19 discuss any type of sexual activity and that that's what
20 he fed off of.

21 Q. And did he tell you that he had actually received
22 videos, more than one, of Ms. Tipton during the same time
23 frame -- at or about the same time frame as this
24 showering video, Government's Exhibit No. 1, that we're
25 describing occurred? Did he tell you that?

1 A. Yeah. It was during the same 30- to 60-day time
2 frame. He said she'd often send it throughout that
3 period of time, but on FlipShare is where we found most
4 of the evidence.

5 Q. And FlipShare is the camera or the recording
6 device that was used, I take it, to record what's shown
7 on Government's Exhibit 1?

8 A. No. The flip camera is the device that was used
9 to record it. FlipShare was the website where Ms. Tipton
10 had uploaded it from her residence and shared it with
11 Chad Hamby using their e-mail addresses. I don't want to
12 give you the impression of, like, she e-mailed it to him.
13 She loaded it on FlipShare and had sent an e-mail
14 notifying him that that video existed.

15 Q. And I'm sorry if I was confused over the flip
16 camera and the FlipShare.

17 A. Me, too.

18 Q. The flip camera was actually the device that was
19 used to record not only what's shown on Government's
20 Exhibit 1 but, I think, some of the other transmissions
21 that were made by Ms. Tipton?

22 A. Yes, sir.

23 Q. And that was a camera that was actually provided
24 by Mr. Hamby, as I understand it?

25 A. Yes, I believe so.

1 Q. And Mr. Hamby -- did he ever reveal to you that
2 he had instructed Ms. Tipton, sort of, how to use this
3 and in what manner or form it might be used? Did he ever
4 share that to you or volunteer that to you in any manner?

5 A. He didn't say that during that interview. I was
6 under that impression from all the evidence in the case
7 and his previous interview and other conversations he had
8 with law enforcement.

9 Q. But Chad Hamby, when he told you that at some
10 point Ms. Tipton had told him she wanted to be present
11 when he watched it, when he watched the video, he led you
12 to believe that was a discussion she was having with him
13 about when he watched the showering video, Government's
14 Exhibit No. 1. Right?

15 A. Yes.

16 Q. He did not say that was as best he could recall.
17 What he asked -- or she asked him to do when he was
18 watching the videos of herself, the multiple videos
19 Ms. Tipton had sent to Mr. Hamby of herself pleasuring
20 herself.

21 A. Correct. He said it was for the showering videos
22 of the victim.

23 Q. Thank you. That's my questions.

24 THE COURT: Any redirect?

25 MS. RANDALL: No, Your Honor.

1 THE COURT: Thank you, Agent Wydra. You may step
2 down.

3 (Witness excused at 11:08 a.m.)

4 THE COURT: Ms. Randall, will there be any other
5 evidence?

6 MS. RANDALL: No further testimony. Only, for the
7 record, we would introduce Government's Exhibit 3 for
8 purposes of our argument. This is a copy of Mr. Hamby's
9 deposition in Tipton versus Tipton, the civil matter. At
10 the appropriate time we've marked as Exhibit 4, which is
11 a Victim Impact Statement, prepared by the victim's
12 father.

13 THE COURT: Mr. Stewart, will there be any
14 evidence for the defendant with regard to sentencing?

15 MR. STEWART: We would not have any documents, if
16 Your Honor please, nor any live testimony we would offer
17 at the sentencing. You have the various memorandums of
18 law; most of them have been filed as attachments and
19 they've already been marked. We have no other offering
20 besides that if, Your Honor please.

21 THE COURT: With that, then, Mr. Stewart, let me
22 hear from you. What is the appropriate sentence for me
23 to impose in this case?

24 MR. STEWART: If Your Honor please. I'm going to
25 do what I can to streamline this argument, but I want to

1 talk about two motions that are before the Court before I
2 actually close. I won't be brief on those. There was a
3 motion filed by my co-counsel, Mr. Jackson, who's
4 unavailable today because of an unexpected loss. He
5 filed -- and his motion for downward departure maybe not
6 in as artful language as he should have. But because
7 Mr. Jackson doesn't practice over here, certainly, in
8 criminal courts very frequently -- in fact, this may be
9 the first time he's appeared in criminal court, I don't
10 know.

11 Before Your Honor there are really two substantive
12 grounds in his motion for downward departure. First, he
13 asks the Court to consider a 5K1.1 reduction in this case
14 because of Ms. Tipton's assistance to the authorities.
15 Ms. Tipton, from the time that she was first
16 interviewed, has provided assistance to the authorities,
17 including not only making a statement outlining her own
18 involvement and her own culpability but also highlighting
19 the culpability of Mr. Hamby.

20 Mr. Hamby subsequently came under the guise of
21 the investigation and subsequently came to be charged and
22 investigated in this case in no small part because of the
23 revelations made early on by Deborah Tipton. Her
24 information about that relationship, her information
25 about how Government's Exhibit 1 came to be, those were

1 all bits of information gleaned from her debriefings and
2 in her interviews. And I would say to the Court that
3 those interviews were reliable, they were complete, and
4 they were truthful.

5 Unlike Mr. Hamby, who's already appeared before
6 you today, the government has not filed a 5K1.1 in
7 Deborah Tipton's case. She is seen by the government, I
8 presume, as the principal wrongdoer here. But I would
9 say to Your Honor that had she not provided the
10 assistance that ultimately led to the arrest of Hamby in
11 this case, there likely would not have been a
12 co-defendant in this case before the Court, and that is
13 one of the grounds the Court may consider in awarding an
14 adjustment for substantial assistance to the authorities.

15 There's a second grounds for the Court to consider
16 making a downward departure and that's 5K2.2, the
17 abhorrent behavior exception. Thankfully, this exception
18 was recognized by Mr. Woo in the revised presentence
19 report. I don't see this exception used much; I guess
20 that's because so few defendants actually fall within the
21 pretty stringent guidelines. As I read 5K2.2, for
22 abhorrent behavior to be considered by the court for a
23 downward departure, it must be a single act or
24 occurrence. It must be without any sort of significant
25 planning. It must be of limited duration, the act

1 itself, and it must be a deviation from that person's
2 otherwise law-abiding life.

3 I think Deborah Tipton and the circumstances and
4 facts of this case fall within that very narrow, very
5 limited application. The clip that we have before you in
6 Government's Exhibit No. 1 was a single act, a single
7 occurrence. We know that because the FBI, over the last
8 17 months, has done, frankly, an exhaustive forensic
9 search of anything electronic that Ms. Tipton and,
10 perhaps, Mr. Hamby had access to. This is the only
11 rendering, the only finding of anything, anything
12 inculpatory of this nature that was found. I can -- Your
13 Honor knows from the arguments made by the defendant in
14 this case that, while we have two clips, one about six
15 minutes, one about two minutes, what has been put before
16 the Court is -- that was actually a single setting, a
17 single session that was interrupted with Ms. Tipton
18 wiping the camera lens. We would say that that taping
19 was without any sort of significant planning.

20 The government has argued, well, that's just
21 another expression of Deborah Tipton's deviousness and
22 her trickery and her deception in this case. We would
23 say that's not at all what occurred. And I would say the
24 best evidence of what that is, what appeared on the tape
25 itself -- and I'm not talking about just the actions of

1 the defendant, I'm talking about the actions of the
2 victim. For abhorrent behavior to be applicable it must
3 be of limited duration. That certainly was the case of
4 what was found and the period of the recording, and it
5 must be a deviation from a person's law-abiding life. I
6 want to think that's probably the one qualification,
7 Judge, that makes most defendants not applicable or not
8 able to be considered for this grounds for departure.

9 I'm not here to tell you my client was a saint.
10 She engaged in an extramarital relationship with Hamby
11 that started in the workplace. She's likely not the
12 first woman to do this or probably won't be the last.
13 But aside from that, she has led a law-abiding life with
14 the exception of this single act, the single occurrence
15 of abhorrent behavior, and I think that it would entitle
16 her or at least make her eligible for consideration by
17 this court for a departure.

18 THE COURT: Let me stop you there for a moment,
19 Mr. Stewart.

20 MR. STEWART: Yes, sir.

21 THE COURT: With regard to 5K2.2. You do set out
22 the elements under subsection (b), but you'll notice also
23 under subsection (a) it says, "except where a defendant
24 is convicted of an offense involving a minor victim." Is
25 this not within the exception to the exception?

1 MR. STEWART: If Your Honor please. You know,
2 actually, I had read that some time ago when I was
3 preparing my objections. I did not remember reading that
4 when I was preparing for this hearing today. If that's
5 what it reads in the language, it speaks for itself. It
6 means what it says. Your Honor, please, we are not
7 arguing that the victim in this case was not a minor at
8 the time.

9 Your Honor, please, the second motion before this
10 court is a motion for variance and I can take the blame
11 for that one. I was the one who prepared and filed that.
12 That motion for variance really just addresses the
13 Section 3553 factors. I set out with some degree of
14 brevity, I think, the 11 factors I think this court can
15 consider. Mr. Woo recognized some of those factors in
16 the revised copy of the presentence report he filed with
17 this court. The Court can consider any combination or
18 number of factors, or none of the factors, in fashioning
19 a sentence that you think is just and meet it is criteria
20 of 3553. I would just say to the Court that the evidence
21 before this court is that Deborah Tipton was a loving and
22 attentive mother. She was a primary caregiver of
23 children in the home. We can't forget, I think, that
24 what happened and what we are here today -- this criminal
25 prosecution, really, arose out of a hotly contested

1 domestic case, a lawsuit, a fight, between her and her
2 estranged husband over custody and support and issues
3 like that. And while that is certainly no explanation or
4 justification for what's happened, that's how this drama
5 was played out at the time.

6 My client appears before the Court with no prior
7 record of any kind. The harm that was actually
8 experienced by the victim in this case is really hard to
9 determine, really hard to assign at this time. It is
10 certainly serious. Your Honor has pointed out in other
11 hearings, and oftentimes harm in these kind of cases
12 really doesn't rise to the level or present itself until
13 years down the road. And it's hard to speculate or guess
14 when and if that will happen in this case. But I would
15 say that at least one thing that has been repeated by
16 various therapists involved in the case is that whatever
17 harm has occurred to the victim has certainly been no
18 less than, and the equivalent of the harm that the victim
19 has continued to experience, having whatever trusting
20 relationship she had with the defendant in this case
21 severed, cut off, removed from the home.

22 There is a gross disparity in this case too,
23 Judge, I think, between the roles -- certainly, the
24 sentences that the government argues Mr. Hamby should
25 have received and received and what Deborah Tipton is

1 facing in this case. There is no history of deviant
2 behaviors. There's no history of her being a pedophile.
3 As Your Honor knows, there is already a significant
4 punishment in this case, as there was in Hamby. And my
5 client, as well, has lost her teaching credentials and
6 license. She's been incarcerated for the last 17 months.
7 When she eventually serves whatever sentence she serves,
8 she will come out as a convicted felon and a sex
9 offender, and we know what kind of restrictions those
10 labels carry.

11 You know from the various reports and
12 examinations, the evaluations and diagnoses in this case
13 that Ms. Tipton, unlike most sex offenders who appear
14 before this court, is at a very, very low risk to
15 re-offend based on the nature and the circumstances
16 surrounding this charge. You also know that she's an
17 excellent candidate for treatment and therapy. Those are
18 just a few of the sort of thumbnail grounds I laid out
19 for the Court. This case, unlike many we see where the
20 defendant's charged with these identical circumstances.
21 This case is really a departure from the heartland of
22 cases I would say to Your Honor. There are a number of
23 facts about this case that are really distinct and really
24 distinguish them from other persons similarly prosecuted.

25 Deborah Tipton is here -- appears before Your

1 Honor this morning and is 45 years old. She was 43 at
2 the time of these offenses. She was originally born in
3 New York state. Her parents are here today in support of
4 her. She married and moved to this state, moved to
5 Henderson County, back in the year 2000. She was married
6 in Florida. She was the mother of two children. She
7 separated at or about the time of these offenses, and she
8 is now divorced.

9 Your Honor knows from the various materials you've
10 read that she has no history of substance abuse of any
11 kind. She has no history of pornography or engaging in
12 pornography or inappropriate contacts with minors or
13 anything of that character or anything of that nature.
14 There's simply no history of it here. There's no prior
15 criminal record of any form.

16 You know that my client, if Your Honor please, had
17 devoted her life to teaching. She was an educator.
18 Unlike Mr. Hamby, she was not an administrator. She
19 worked in various positions. She was an assistant, and
20 at some point she was a substitute teacher. She
21 eventually became a full-time teacher of children around
22 the eighth grade level. Not just any children, either,
23 but handicapped children, Special Needs children. She
24 was a Special Educations teacher and that's what she had
25 devoted her life and her craft to.

1 There are, sort of, three points I want to call to
2 the Court's attention that I think are significant for
3 Your Honor to consider in sentencing in this case. One
4 is -- and I mentioned this briefly a moment minute ago.
5 If Your Honor please, the damage that has been done and
6 the injuries -- the harm that has been caused to the
7 victim in this case may not surface or appear for many
8 years to come and we understand that. We accept that.
9 That being said, though, the damage that has been caused
10 by the forced separation, even the trauma of this
11 judicial process, which is unavoidable, cannot also be
12 denied in this case.

13 The separation of Ms. Tipton out of the family and
14 away from that family has had a profound effect on
15 persons involved in this case. There was therapists
16 involved in this case early on, and you have a copy of
17 her report, it's Polly Penlan. And it was Ms. Penlan who
18 opined that there is far more damage to the child by the
19 mother being taken away than any act charged here.
20 That's her opinion, and I understand that. But if there
21 was one thing that was really telling about the harm in
22 this case it was the statement of the victim herself -- I
23 think it was actually attached to the objections to the
24 presentence report -- because the victim made a statement
25 when she was being interviewed by Dr. Husted, the MD who

1 did the psychological evaluation. He asked her very
2 candidly. He said, you know, if there's one thing -- if
3 there's anything you could change in your life about this
4 right now, what would it be? And the victim reported to
5 him, you know, I would just like to have my mom back.

6 The second point I want to call to the Court's
7 attention -- and I mention this also just as to the
8 disparity. The distinctions in this case are striking.
9 The evidence in this case, I would say to Your Honor,
10 contrary to what Mr. Hamby told this agent, was
11 Deborah's Tipton's design or Deborah Tipton's plan. My
12 client is not a pedophile. We can quibble over words,
13 but I think Dr. Husted, the MD who did the evaluation in
14 this case who -- the therapist by the name of Honeycutt,
15 you've read her report. There was also an examination
16 that was done by Dr. Middleton.

17 All of these persons have determined and all these
18 persons have stated, if Your Honor please, that while she
19 was engaged in this relationship and apparently trying to
20 fulfill this man's needs or this man's fantasies, these
21 were not fantasies that were Deborah Tipton's. These
22 weren't needs that she had to have met. And I would say
23 to Your Honor that that is one thing that distinguishes
24 Deborah Tipton's case from other persons similarly
25 charged. This is not a case where we have any kind of

1 intentional infliction of physical harm or at least, hey,
2 no minor -- this is not a situation where we have some
3 sort of networking or cache of pornographic images or sex
4 -- children in sexual activities out there. This is not
5 a case where we have a network of sharing of materials
6 between persons or going online. This is not a case, if
7 Your Honor please, of any sort of lewd or lascivious
8 touching or contacts involving minors.

9 As a matter of fact, if you compare Deborah Tipton
10 and what she did in this case to the acts of the
11 co-defendant who was just sentenced, that person did
12 indeed admit an addiction to watching children, as I
13 recall, girls between the ages of 13 to 15 over Limewire
14 for some period of time. That does not diminish her
15 culpability and I understand that. That does not
16 undercut her, you know, her own guilt here or that's not
17 a justification for what she did.

18 But it is important, I think, if Your Honor
19 please, to recognize that Mr. Hamby was the one who
20 provided the camera. He told her how to operate the
21 camera. He's the one, if Your Honor please, who
22 requested these videos from her, both her personally and
23 from one other source. So the fact that he comes in here
24 and is facing a minimal sentence, at least compared to
25 what Deborah Tipton is facing, that disparity is striking

1 in this case. Early on, she faced a multiplicity of
2 charges. Her exposure, frankly, would have been much
3 greater than what she is facing before this court today.
4 Hamby has not had to face that, and that is disturbing to
5 me in this case.

6 Thirdly, if Your Honor please, but for these
7 charges, but for this case that is before you today,
8 Deborah Tipton has led -- without any sort of
9 explanation, she has led a very productive life. She's
10 led a positive life, both in her professional community
11 and her life at home. She's contributed significantly to
12 her profession and her teaching endeavors and the persons
13 that she's dealt with. She has been a loving and
14 attentive mother to her family.

15 Your Honor knows from reading the psychological
16 reports that this woman had really had an extraordinarily
17 close relationship with her children. That's not
18 something she fostered. There was nothing devious about
19 that, in light of what's happened here. That's the kind
20 of bond and that's the kind of relationship she had with
21 her own kids. She has been a good person the entirety of
22 her 45 years, certainly a law-abiding citizen but for
23 this event that brings her before the court here today.
24 I just hope that, in consideration of what you think is a
25 fair and a just sentence, your judgment will in some way

1 serve to reflect that.

2 You know, this was a single incident. We claim,
3 whether it qualifies as abhorrent behavior, it is an
4 abhorrent act. If Your Honor please, that was a
5 departure from a life of being a law-abiding citizen.
6 That's really what it was to Deborah Tipton. The
7 judgment, I hope it reflects in some ways her own
8 struggles and her own shortcomings in this case. You
9 know from the various opinions you've read of the
10 therapists and doctors that examined her that this is a
11 woman who had a lot of issues and continues to have a lot
12 of issues, some which are mental health issues, dealing
13 with her own depression and adjustment disorders,
14 personality problems.

15 She was very vulnerable at the time she was in
16 this relationship with Hamby, and I think all parties
17 have concluded she was easily influenced. Again, that is
18 not justification for what she's done, but I think that
19 is some explanation for why a woman who was 43 at the
20 time, who had led a law-abiding life, who was close and
21 bonded and in a loving relationship with her family, was
22 brought to the point that she did. So if Your Honor
23 please, these are just some of the factors I would argue
24 Ms. Tipton's path that I would argue to the Court
25 extracts or removes this case from the heartland of

1 similar cases like this.

2 Your Honor is going to enter a sentence today.
3 I've appeared before Your Honor enough to know you're
4 very -- you're very thoughtful, not just about this case
5 but all cases, and you try to impose a sentence that you
6 think fashions such that the punishment will fit the
7 crime. That's really all I can ask on behalf of my
8 client today.

9 You have been inundated with the motions and the
10 paperwork filed by both sides in this lawsuit over the 17
11 months that this case has been in gestation. You have
12 probably seen and read and been confronted with more
13 things in duplicate than you ever needed to, and I
14 apologize for that. But I just ask Your Honor to be
15 compassionate and to consider her past, not just what
16 happened here, and do your best to make that judgment
17 that you impose today proportion to the crime that was
18 committed.

19 A couple of special requests, and they're only
20 borne out by what you've seen in some of the filings.
21 Ms. Tipton, evidently, has a series of mental health
22 issues that need to be addressed in the service of her
23 sentence. Any facilities or programs that are available
24 at the Bureau of Prisons, I would make that request on
25 her behalf. Also, like Mr. Hamby, the very nature of

1 this charge and her admitted involvement in this charge
2 is as a sexual offender. So any participation she might
3 have in any sort of treatment program while she's
4 incarcerated would also be welcome. Thank you.

5 THE COURT: Thank you, Mr. Stewart.

6 Ms. Randall, what's the position of the
7 government?

8 MS. RANDALL: Your Honor, the government is
9 recommending a sentence of 240 months in this case.
10 Before addressing the 3553A factors, I wanted to briefly
11 respond to the defendant's motion for a downward
12 departure. As Your Honor's already noted, the abhorrent
13 behavior departure does not apply to this type of case.
14 Because of the nature of the conviction, it specifically
15 says the Court should not consider an abhorrent behavior
16 departure. However, with regard to the assistance to
17 authorities, they claim that because of her interview
18 that she gave to law enforcement the one time she spoke
19 to law enforcement that that led to the investigation and
20 prosecution of Mr. Hamby, and that's just completely not
21 true.

22 Mr. Hamby pled to knowingly receiving child -- a
23 visual depiction of a child engaged in sexually explicit
24 conduct. And if you look at Ms. Tipton's interview with
25 law enforcement, which is Government's Exhibit 2, what

1 she says about Mr. Hamby's involvement was that he never
2 asked for a picture of the victim. "I don't remember him
3 actually asking for them. I don't think he asked me."
4 How does that lead to the conviction of Mr. Hamby? She
5 did nothing to lead to his conviction. Law enforcement
6 already knew Mr. Hamby had the video before they
7 interviewed her, Your Honor, because of the fact that the
8 forensics and the information from FlipShare showed he
9 received the video. And when he was interviewed, he
10 immediately admitted to what he did. That's what led to
11 his conviction. It had absolutely nothing to do what
12 with what Ms. Tipton did in this case. If anything, she
13 minimized his and her behavior in this case.

14 With regard to the 3553(a) factors. Your Honor,
15 the government is seeking a 240-month sentence in this
16 case, receiving 240 months on the transportation and 120
17 months on the possession charge to run concurrently,
18 because it was the same image that's the basis of both of
19 those offenses. However, that doesn't -- the fact that
20 the government's asking them to run concurrent does not
21 negate the nature and circumstances of this case.

22 Your Honor's had a chance to review the video
23 that's at issue. This is not an anatomical video. It's
24 not an educational video. It is a video produced by a
25 woman hoping to sexually excite the man she had engaged

1 in a seven-year relationship with. There are innocent
2 bathtub pictures of children that exist; this is not one
3 of them. It's child pornography. I know the defense
4 objects to me calling it "child pornography," but child
5 pornography is defined as a visual depiction of a minor
6 engaging in sexually explicit conduct, which is what she
7 pled guilty to Your Honor.

8 Why did she do this? Why did she initiate this?
9 Why did she film this? Why did she distribute it?
10 Because she wanted to please the man that she was
11 engaging in a sexual relationship with. She got sexual
12 gratification out of that, Your Honor. They say
13 Mr. Hamby is the dominant one in this relationship, but
14 there's no doubt she was receiving satisfaction from this
15 as well Your Honor. She was willfully engaging in all of
16 these behaviors over a seven-year period. That's what
17 led to her betraying the trust of her child.

18 The government would argue that the evidence in
19 this case shows that this affair had been going on for
20 several years. In May of 2011, Mr. Hamby left the
21 school and transferred to another school. At that point,
22 their relationship slowed down. Mr. Hamby has stated
23 that, and the evidence has shown, that that's -- that he
24 had moved schools and this was occurring. The government
25 believes at that point that Tipton feared that their

1 relationship was coming to an end. They were not
2 chatting as much. They had not met for any of their
3 sexual encounters. They were not working out together.
4 She even told her therapist, Your Honor, in her
5 government -- in her defense exhibits that Hamby was
6 attempting to disentangle himself from her. That's taken
7 directly from their case. The fact is, her home life was
8 falling apart. She cannot have a good relationship with
9 her husband. She was using the one man that she did have
10 in her life that she was turning to -- she described him
11 as a friend to her, someone she went to for advice and
12 that she looked up to. She was losing him as well.

13 So she used her daughter in a sick attempt to
14 bring him back. She was the one who told him, you should
15 see how she's developing. She was the one who put it out
16 there knowing that it was something that would sexually
17 excite him. And he did ask her to send it to him. She
18 hasn't said that. He's the one who admitted to it, Your
19 Honor. And we would tell you that his testimony -- his
20 statement to law enforcement is quite reliable because it
21 was a statement against his interest. He owned up to
22 everything he did, Your Honor. He owned up to more than
23 we even knew about in terms of his previous reviewing of
24 child pornography. We knew some about it. He talked
25 about it and he gave us more detail on that. He

1 completely owned up to his half of it. As you know,
2 Ms. Tipton said he never asked for it but he said, no,
3 when she told me about it, I said yeah, I want to see
4 that. Send it to me. Your Honor, so that's why we think
5 his statement is reliable in this case.

6 In the filings of this case the defendant
7 repeatedly tries to portray this as being an innocent
8 video; that it's something between her and her daughter
9 and that her daughter was participating in and asked her
10 to do. Your Honor's reviewed the videos and the
11 transcripts and I think that is what paints a different
12 picture. In the one video she surprises her daughter in
13 the shower. It's clear because her daughter says, what
14 are you doing? Oh, my gosh, mom. And she has the camera
15 videotaping her daughter. She's telling her to "show
16 me." And then her daughter is showing her and singing
17 and dancing. At some point Tipton brings the camera to
18 show her daughter's genitalia. And the daughter says,
19 "What are you doing?" And she's the one who says, "Time
20 for an update." Her daughter says, "What are you doing?
21 Oh, okay." And she instructs her, "open it up," meaning
22 her vagina. "Let me see. Open. Open it up again." And
23 she continues. "Open it up more. Let me see what's
24 inside the folds. Spread it so you can see the hairs
25 inside, too."

1 Your Honor, as you've seen, the video is
2 horrifically and disturbingly centered on what is a lewd
3 and lascivious shot of the child victim in this case. It
4 shows more than that. She also shows other parts of her
5 daughter's body, never attempting to capture her face.
6 And what is particularly disturbing about that video is
7 the last thing Ms. Tipton says. As she's closing out the
8 video she says, "Enjoy," which is the same word she put
9 on the e-mail she sent Mr. Hamby when she sent this
10 video, she claims. She closes that video out "Enjoy" and
11 that is what she put as the heading when she sent that
12 video to Mr. Hamby.

13 The same thing with the other video, Your Honor.
14 She tells her daughter that we're taking an educational
15 video to teach you how to shave your arms. But instead
16 of showing her daughter shaving her arms or her armpits,
17 she's showing her genitalia. Again, the camera is
18 focused solely on her genitals and doesn't have her face
19 or her arm in it. It starts out showing her arms, but
20 later on it drops down below her waist. And her daughter
21 says, "Will you stop staring there and look at my
22 underarms?" And she was like, "Wow. I'm getting up
23 close." And her daughter is like, "No. Up. Up here.
24 Up here." And then Ms. Tipton again goes down to show
25 her genitals and says, "I want to see this again. Pull it

1 out more." And when the victim says, "It doesn't go much
2 farther than that," she says, "It doesn't? Are you
3 sure?" Ms. Tipton was clearly the one directing this and
4 instructing her daughter on what to do so that she could
5 create this video and Immediately send it to Mr. Hamby
6 with the title "Enjoy."

7 What's particularly disturbing about this, Your
8 Honor, is what led up to it. She told him, "I have a
9 surprise for you." She tried to build up the
10 anticipation he was going to have of viewing a video of
11 her own daughter. And when she sent it to him she told
12 him, "I wish I could be there to sit on your lap and feel
13 you get excited" by her daughter, Your Honor.

14 And in this case she had picked what could only be
15 described as the perfect victim, someone who trusted her,
16 looked up to her, believed she would protect her; someone
17 she believed would never hurt her, Your Honor, someone
18 who was close to her and that would never tell, someone
19 who would believe her when she said we're doing these
20 videos to document your maturing and how we're doing
21 these shaving lessons. Her daughter believed this was
22 something between them, something that was part of their
23 bond, but it didn't stay that way. She sent it to Mr.
24 Hamby, a man they claim is a pedophile; a man who they
25 claim is a horrible, horrible person. She's the one who

1 sent him the video, not knowing if he was going to
2 distribute it to other people, not knowing what he was
3 going to be doing with it. She didn't care. She didn't
4 care about protecting her daughter all she cared about
5 was satisfying her and her lover's sexual needs, which
6 brings me to the characteristics.

7 Your Honor, she wants to say she's a good mother.
8 She's brought forward people and psychiatrists reports to
9 say she's a good mother. A good mother does not make
10 this individual. A good parent would not send this to a
11 man as a surprise and say she wanted to sit on his lap.
12 It's disturbing -- again, Your Honor, it's so disturbing
13 to think she wanted to feel the erection of someone who
14 is sexually viewing a video of her daughter.

15 I know Your Honor's found she's accepted
16 responsibility, but what acceptance she put forward is
17 bare minimum. To this day, in her reports, she's still
18 saying maybe my husband did this to frame me. Maybe I
19 did it by accident. I didn't make a sexually explicit
20 video. If she can't admit what she did is wrong, Your
21 Honor, what hope is there for rehabilitation in this case
22 or that she would not do it again in the future? Their
23 filings and their argument today, all it does is blame
24 everyone else. It doesn't talk about what she did and
25 the harm that she caused to her daughter. They blame it

1 -- the only acknowledgment of her role is to say that
2 she's socially immature and a people pleaser; that it's
3 Chad Hamby's fault because he asked her to do it. That
4 makes no sense.

5 If Mr. Hamby had given her a suitcase of cocaine
6 and said take this to Mexico, she wouldn't have done
7 that. If he had said I want a video of you raping your
8 child, are they going to say she would have done that
9 because he asked her to? If he had said I want to -- I
10 want a video of you killing somebody, was she going to do
11 that? No. She knew right from wrong. She could draw a
12 line, Your Honor, but this was not a line she wanted to
13 draw. She wanted to give this to him because she wanted
14 to entice him, Your Honor, and she needs to take
15 responsibility for this.

16 She's also blaming her divorce. This was a highly
17 contested divorce case, a separation, but that inures the
18 fact this video was taken months before the separation.
19 Yes, there was probably marital discord going on in the
20 house. But there was no divorce filing yet, Your Honor.
21 That did not occur until months later. This was a video
22 she created before that ever happened, and it did not
23 arise out of this highly contested civil litigation.

24 In her favor she does have a strong support
25 system, Your Honor. I've had the opportunity to read the

1 letters and affidavits submitted by her friends and
2 family, and the one thing that jumped out to me is many
3 of them still don't think she did anything wrong. They
4 say things like, if she did do this, you know, and this
5 is after she's pled guilty. "If she did do it," or "I
6 still believe there's reasonable doubt." It says two
7 things: She hasn't admitted to them what she actually
8 did, and they don't really know who she is and what she's
9 capable of.

10 It reminds me of her detention hearing when people
11 stood on her behalf and offered her a place to stay.
12 The magistrate said he wished he had friends like that.
13 But what he said was they don't know what he knows. They
14 don't know what's in the complaint. That's the case
15 here. They don't know what we know, Your Honor. They
16 haven't had access to this discovery to know what this
17 actually entails. We're not saying she's a pedophile,
18 Your Honor. What we're saying is she knew what she was
19 doing and she did this on purpose.

20 With regard to the sentencing disparity argument
21 and what they refer to as the "equal protection argument"
22 claiming because she's a woman, she's being treated
23 differently. It's ironic, Your Honor, because she's
24 asking this court to treat her differently because she's
25 a woman, because she's a mother. She relies heavily on

1 the status of the fact she's a mother in asking for this
2 downward variance. I can't imagine a case where a man
3 would ever come before this court, or has ever come
4 before a court, and said I'm the father of the victim and
5 I need to be there for the victim. You should let me be
6 there because you're harming the victim by not having
7 their father. In fact, normally, we vilify a mother who
8 stays with a father who has produced images of a daughter
9 or a son.

10 And then with Mr. Hamby. They're trying to say
11 he's the one -- he should face more equal criminal
12 charges. Your Honor, they want him to plead to accessory
13 or aiding and abetting the production of child
14 pornography, which is ironic because they argued there
15 was no child pornography throughout this whole thing and
16 that it wasn't sexually explicit until today. Why should
17 they have Mr. Hamby plead to production when she didn't
18 plead to production?

19 They actually pled to what they did in this case.
20 He pled to receiving the video she transported. She pled
21 to transportation and possession. There is no unequal
22 application of the prosecution's discretion in this case,
23 Your Honor. They pled to what is sentenced under the
24 exact same guideline, 2G2.2. Hers is higher because she
25 is more culpable. What she did is more egregious and

1 more abusive. Your Honor, she is one who took the video.
2 She's the one who abused her own daughter and she's the
3 one that distributed it. But for her actions, Hamby
4 would never have received that video and her husband
5 never would have found it, Your Honor. So her guidelines
6 cross-referenced 2G2.1. He stayed under 2G2.2 because he
7 was not involved in the production aspect of the case.
8 So there is no sentencing disparity in the case. The
9 guidelines are what led to the sentences being what they
10 are.

11 Although not discussed much today, the filings,
12 Your Honor, repeatedly attack her husband and try to
13 shift a lot of the blame to him and he saying should be
14 facing as much time as her. Your Honor, people like
15 Mr. Tipton are not exposed to this like you or me or the
16 defense counsel are. We are someone who sees and who
17 deals with child pornography type cases all the time.
18 When you take the average person off the street who
19 doesn't even think child pornography really exists, they
20 don't even think about it, and you throw them in the
21 middle of this, a typical reaction is to be shocked and
22 is to be confused by it.

23 Would I have loved for him to run to law
24 enforcement immediately? Yes, that would have been the
25 best reaction, Your Honor, in an ideal world. But when

1 you're in the middle of a messy divorce, and when
2 everything you do is going to be watched and critiqued
3 and you're going to be accused of doing things, the fact
4 that it took an extra minute to take it to someone he
5 trusted, like a therapist or his attorney, and to be
6 like, is this what I think it is, Your Honor, before
7 calling law enforcement is not -- shouldn't be held
8 against him or give her any kind of grounds for a
9 variance. Because as soon as he talked to someone he
10 trusted, he was there -- he talked to police; he talked
11 to DSS, Your Honor.

12 And with regard to other child pornography cases.
13 Your Honor, I'm not sure exactly what sentence they're
14 asking for. They're just seeking a variance. But if you
15 look at other child pornography cases in this case where
16 someone produced a video or an image, as reflected in the
17 sentencing memorandum the lowest sentence I found was 168
18 months and they go all the way up to 37 years.

19 I know Your Honor has sentenced multiple people
20 who produced child pornography, some in very similar
21 cases to Ms. Tipton, some worse and some not as bad.
22 Mr. Tillman, I know, got 37 years. Mr. Barrel, I
23 believe, got 28 years, Your Honor. So the sentence we
24 are seeking is within the heartland of what she did. The
25 fact that she doesn't have a criminal history, Your

1 Honor, is actually already taken into account which the
2 guidelines. If she had a criminal history, if she had
3 been caught doing something like this before, she would
4 be facing a much, much higher sentence. We think the
5 sentence of 240 months would address the seriousness of
6 the offense, Your Honor, and be the just punishment in
7 this case.

8 I know Your Honor recognizes the harm -- the
9 perpetual lifelong harm this is going to have to not only
10 the victim but her family. There is no doubt there was a
11 strong bond between her and her mother, and for her to
12 lose her mother has been completely painful to her. And
13 her having to work through that, Your Honor, is horrible.
14 And that's on top of knowing what she knows about her
15 mother sending this video to Mr. Hamby. That's all
16 Mrs. Tipton's fault. She's causing all of that harm to
17 her daughter and has turned her life upside down.

18 At the closing of the argument, Your Honor, I will
19 hand up Mr. Tipton's Victim Impact Statement which is
20 marked as Government's Exhibit 4. He had planned on
21 reading it, Your Honor, but we're going to instead file
22 it to try and maintain some of the privacy of the victim.

23 THE COURT: That's the same Impact that was filed?

24 MS. RANDALL: It's not, Your Honor. It's about a
25 little over a page, if you take out the part he scratched

1 out. It's kind of an update of what's happened since
2 then.

3 And with regard to the ongoing harm, Your Honor,
4 of her being separated from her daughter. This is
5 something the government spoke at length with the
6 guardian ad litem about, who has been in very close
7 contact with the therapist in this case. We recognize
8 the fact that her daughter is suffering from the lack of
9 a relationship with her mother, and we are actually going
10 to ask the Court to enter into the judgment a way for the
11 daughter to have very limited contact with her mother, as
12 seen fit when the victim wants it, but also as seen fit
13 by her therapist and the guardian ad litem, Your Honor.

14 We would like an opportunity for her to talk to
15 her mother and ask her the questions she wants to ask and
16 hear what her mother has to say, but we want it to be a
17 supervised contact visit, preferably supervised by her
18 therapist or the guardian ad litem. I know I've talked
19 to the guardian ad litem who is willing to do it, and I
20 believe the therapist would be as well. She is here, as
21 well, because we are trying to ameliorate some of the
22 harm that's been done to her, harm that's been caused by
23 Mrs. Tipton. So that should remedy any concern that she
24 needs to get out sooner because it's harming her daughter
25 not to have any contact with her.

1 Your Honor, I don't want to repeat too much in
2 this sentencing memorandum but I can't talk enough about
3 the reason she's deserving of this sentence is because,
4 while there may not have been a hands-on sexual offense
5 in this case, the fact that she abused the relationship
6 she had with the victim in this case and that she was so
7 willing to do that for such a stupid reason, Your Honor,
8 speaks that there needs to be a strong message for
9 deterrence, not only for her but other people like her,
10 Your Honor, who are willing to use their children as
11 pawns in their sexual relationship; willing to use their
12 children as bait in order to make a man happy.

13 She is a smart woman. Your Honor, she has a
14 master's degree. She knows right from wrong and she
15 could have said no, but she wanted to be in this
16 relationship. This was a seven-year relationship. This
17 wasn't something that was new to her. This wasn't
18 something where she was trying to figure it out. She was
19 comfortable in this relationship. She depended on this
20 relationship. She wanted it to continue. And because of
21 that we are here today. She needs to own up to that and
22 she needs to receive a just punishment that will reflect
23 that. Therefore, we are seeking the sentence of 240
24 months in the case.

25 We would ask that you incorporate the judgment of

1 forfeiture, Your Honor, into her final judgment. We did
2 file the restitution memorandum similar to what we did in
3 Mr. Hamby's case. If I could just hand up Government's
4 Exhibit 4 at this time?

5 THE COURT: You may approach and hand that up.

6 Ms. Tipton, at this time you have the opportunity
7 to address the Court and to tell me anything that you
8 feel I need to know before I make my decision about your
9 sentence in this matter.

10 THE DEFENDANT: Your Honor, I just wanted you to
11 know that I love my family and my children very, very
12 much and I am very sorry for all my bad judgments and
13 mistakes that I have made. And I never wanted to harm
14 them or anybody. And I have -- I've caused a lot of pain
15 and a lot of suffering for not just my children, my whole
16 family, for everything that they've had to go through.

17 My parents have, you know, put up their retirement
18 to help cover my fees. And they haven't seen their only
19 granddaughters -- very limited. They've been being kept
20 from them and I know that hurts them very much. I hope
21 some day that I can repay them for everything that
22 they've done for me. And I have -- I've lost everything,
23 everything. I mean, my career, everything that I owned
24 that's still in the house.

25 More than anything, I've lost my children. And

1 that's -- that's very difficult. I know it's difficult
2 for me. I can only imagine what they're going through
3 with all of this. We were -- we were very close. We did
4 everything together. I taught -- I mean, I taught at
5 their school. We were together from the time I woke up
6 in the morning until the time, you know, I read them
7 bedtime stories at night. I was involved with all their
8 activities and events. And, I mean, they would come to
9 me with everything. I mean, T.L. has lots of questions
10 and always did, and we'd answer them and try to find the
11 answers to them. And she'd come to me with all of her
12 problems, you know, when she was upset or angry, and, you
13 know, we'd always talk it all out. She would come to me
14 with the bright ideas that she always had and, you know,
15 things that she wanted to try. And it was -- we were
16 very close.

17 I've taken that. And it's all -- it's all gone,
18 and I can't get that back. I can't do it over. I mean,
19 I made mistakes, bad judgments, and there is no do-overs.
20 I can't take any of that back. I can just learn from my
21 mistakes and move on. I mean, I pretty much abandoned my
22 kids. I mean, one day T.L., you know, may recollect my
23 promise not to leave her alone and then the next I get a
24 phone call and walk out that door. I didn't even get to
25 say good-bye to them. I just walked out that door and

1 haven't seen them in 19 months. That was February 21st
2 2012. At 7 o'clock that night I just walked out the
3 door. And I can't even imagine what they're going
4 through because of what, you know, I'm going through here
5 not being with them and wondering what they're doing and
6 how they're doing.

7 I can only imagine what they're doing and having
8 to go through and how they're coping and what they're
9 facing on the outside with all the people and the media
10 and everything. I just -- I don't know. I pretty much
11 just walked out of their lives. I just hope that they
12 can forgive me for what I've done. And I just -- and I
13 pray to God every night that T.L. doesn't blame herself
14 for any of this. She doesn't have anything to do with
15 this.

16 It was all my fault and I've learned a lot from
17 this experience. I mean when you go through something
18 like this, you can't take back the past. Like I said,
19 you can't do it over. You can only learn from it and
20 just move on and move forward and just try to make you a
21 better person from it; maybe help others not to make the
22 same mistakes that I've made and keep them going from
23 going through the same trials that I've been going
24 through.

25 I just -- I'm sorry. I just want to be able to

1 make opportunities out of this, too. I mean, I've lost
2 my career. I just want an opportunity to go on and do
3 something else with my life, you know, follow other
4 passions that I have and be able to reunite with my
5 children again and get back to being the mother that I
6 was and being in their lives again. I just miss them
7 very much. I'm sorry for everything that I've done and
8 everything I've put people through. I mean T.L. and my
9 family, everybody. I can't take it back, but I can just
10 try to make the best of it from here on out and make
11 myself a better person and try to help others. Thank
12 you.

13 THE COURT: Thank you, Ms. Tipton.

14 Pursuant to the Sentencing Reform Act of 1984 and
15 the case of *United States versus Booker*, it is the
16 judgment of this court, having considered the factors
17 noted in 18 U.S.C., Section 3553(a), that the defendant,
18 Deborah Lee Tipton, is hereby committed to the custody of
19 the United States Bureau of Prisons to be imprisoned as
20 to Count Two for a term of 216 months and as to Count
21 Three for a term of 120 months, with those terms to run
22 concurrently.

23 With regard to the application of the factors for
24 sentencing under the statute. There are several factors
25 that go into this decision regarding the sentence.

1 First, as I say often in these child pornography cases, I
2 find that the sentencing guidelines are of very limited
3 value in assessing what an appropriate sentence is,
4 because I think there is a certain disconnect between the
5 statutory sentencing scheme set out by Congress and the
6 guidelines scheme set out by the Sentencing Commission.

7 With these cases I see the statutory scheme
8 largely broken down into three categories or three
9 brackets: The possession offenses which are bracketed
10 for sentences of zero to ten years, the transmission
11 offenses that are bracketed for sentences of five to 20
12 years, and the production offenses which are bracketed
13 for sentences of 15 to 30 years. I think it is clear
14 that this falls in that third category, that being a
15 production offense.

16 The argument has been made here that there is a
17 disparity between the sentence being sought by the
18 government and what has been provided by the Court here
19 in this case versus what Mr. Hamby received. However, I
20 believe that the facts here are that this is a production
21 offense. Whereas, I don't believe that the evidence
22 supported a production offense in Mr. Hamby's case. Not
23 to excuse his conduct -- he got a lengthy sentence, too
24 -- but his was not a production offense and this one is.

25 Viewing this case, then, within that 15- to

1 30-year bracket which, I believe, is the only appropriate
2 bracket within which to view this case, there are certain
3 things that mitigate and certain things that are
4 aggravating. All of these reflect the seriousness of the
5 offense, which is one of the primary factors for
6 sentencing under the statute. Of course, mitigating
7 aspects here are the fact that the victim here was not
8 forced or induced to commit any sort of sexual act which
9 is often seen in these child pornography cases and,
10 therefore, that moves it toward the lower end of the
11 bracket that is at hand.

12 Also, there was no sexual contact between the
13 defendant and the victim. However, there are aggravating
14 factors here. First and foremost, there is the breach of
15 probably, the most sacred position of trust and
16 confidence that one person can have in another in this
17 case. As I am in this job, after a while, you think
18 you've seen everything. I have to say that this is a new
19 one for me. I did not think I would ever see a case like
20 this. The breach of that position of trust that has been
21 exhibited in this case is clearly a factor that does not
22 allow me to impose a sentence at the low end of the
23 bracket of 15 to 30. In addition, this case is very
24 similar to one that we've had here in this court not too
25 long ago that was also not a contact offense, also

1 involving minors of approximately this same age, but that
2 one involved voyeurism, really. Whereas, this one
3 involved the manipulation of a child and I see that as
4 being something of an aggravating factor as well.

5 Another factor I have here is the fact that even though
6 the defendant admits the facts of her offense, she does
7 not seem to have come to grips with the criminality of
8 her actions, and that is an aggravating factor as well.

9 Taking all of those things into account, I
10 believe, reflects the seriousness of the offense. I
11 believe that that is also a -- it provides a sentence
12 that is necessary to afford adequate deterrence to
13 criminal conduct and provides just punishment for the
14 offense in this matter. I believe that this sentence
15 also avoids unwarranted sentencing disparities among
16 defendants, not just as between this defendant and
17 Mr. Hamby but as between this defendant and others who
18 produce videos depicting minors engaged in sexually
19 explicit activity. For those reasons I have imposed the
20 sentence that I have.

21 The Court calls to the attention of the custodial
22 authorities that the defendant has a history of mental
23 health issues and recommends that the defendant be
24 allowed to participate in any available mental health
25 treatment programs while incarcerated as may be

1 recommended by a mental health professional.

2 The Court recommends that the defendant be
3 participate in a sex offender treatment program while
4 incarcerated, if eligible.

5 It is ordered that the defendant be required to
6 support all dependents from prison earnings while
7 incarcerated, as outlined in the presentence report.

8 Upon release from imprisonment the defendant shall
9 be placed on supervised release for a term of the balance
10 of her life. That is a life term of supervised release
11 as to Count Two and a life term on supervised release as
12 to Count Three, with those terms to run concurrently.

13 Within 72 hours of release from the custody of the
14 Bureau of Prisons the defendant shall report in person to
15 the probation office in the district to which the
16 defendant is released. While on supervised release the
17 defendant shall not commit another federal, state or
18 local crime and shall comply with the standard conditions
19 that have been adopted by the court in the Western
20 District of North Carolina.

21 In addition, the defendant shall have -- shall
22 comply with the following additional conditions. The
23 defendant shall have no direct or indirect contact at any
24 time for any reason with the victims or affected parties
25 in this matter unless provided with specific written

1 authorization to do so in advance by the United States
2 Probation Officer.

3 The defendant shall submit to a mental health
4 evaluation and treatment program under the guidance and
5 supervision of the United States Probation Officer.

6 The defendant shall remain in treatment and
7 maintain any prescribed medications until satisfactorily
8 discharged by the program and with the approval of the
9 United States Probation Officer.

10 The defendant shall submit to a psycho-sexual
11 evaluation by a qualified mental health professional
12 experienced in evaluating and managing sexual offenders
13 as approved by the United States Probation Officer.

14 The defendant shall complete the treatment
15 recommendations and abide by all of the rules,
16 requirements and conditions of the program until
17 discharged.

18 The defendant shall take all medications as
19 prescribed.

20 The defendant shall submit to risk assessments,
21 psychological and physiological testing, which may
22 include but is not limited to polygraph examinations
23 and/or computer voice stress analyzer or other specific
24 tests to monitor the defendant's compliance with
25 supervised release and treatment conditions all at the

1 direction of the United States Probation Officer.

2 The defendant's residence and employment shall be
3 approved by the United States Probation Officer. Any
4 proposed change in residence or employment must be
5 provided to the United States Probation Officer at least
6 ten days prior to the change and pre-approved before the
7 change may take place.

8 The defendant shall not possess any materials
9 depicting and/or describing child pornography and/or
10 simulated child pornography as those terms are defined in
11 Section -- nor shall the defendant enter any such
12 locations where such materials may be accessed, obtained
13 or viewed, including pictures, photographs, books,
14 writings, drawings, books, videos or video games.

15 The defendant shall register as a sex offender and
16 keep such registration current in any jurisdiction where
17 she resides, where she is an employee, or where she is a
18 student. For initial registration purposes only the
19 defendant shall register in the jurisdiction of
20 conviction if such is different from the jurisdiction of
21 residence.

22 The defendant shall not use, purchase, possess
23 procure or otherwise obtain any computer or electronic
24 device that can be linked to any computer network,
25 bulletin board, Internet, Internet Service Provider or

1 exchange formats involving computers unless approved by
2 the United States Probation Officer. Such computers,
3 computer hardware or software, is subject to warrantless
4 searches and/or seizures by the United States Probation
5 Office.

6 The defendant shall allow the United States
7 Probation Officer or other designee to install software
8 designed to monitor computer activities on any computer
9 the defendant is authorized to use. This may include but
10 is not limited to software that may record any and all
11 activities on computers that the defendant may use,
12 including the capture of key strokes, application
13 information, Internet use history, e-mail correspondence,
14 and chat conversations. The defendant shall pay any
15 costs related to the monitoring of such computer usage.

16 The defendant shall not use or have installed any
17 programs specifically or solely designed to encrypt any
18 data, files, folders or volumes of any media.

19 The defendant shall, upon request, immediately
20 provide the probation officer with any and all passwords
21 required to access any data encrypted or compressed for
22 storage by any software. The defendant shall provide
23 complete records of all passwords, Internet Service
24 Providers, e-mail addresses, e-mail accounts, screen
25 names and the like, both past and present, to the

1 probation officer, and shall not make any changes without
2 the prior approval of the United States Probation
3 Officer.

4 The defendant shall not use possess or control any
5 bootable Linux or counter-forensic tools.

6 The defendant shall not have any social networking
7 accounts without the approval of the United States
8 probation officer.

9 During the period of supervised release the
10 defendant shall notify all employers, family, friends,
11 and others with whom she has regular contact of her
12 conviction and/or history as a sex offender and that the
13 defendant is being supervised by the United States
14 Probation Office.

15 The defendant shall not be employed in any
16 position or participate as a volunteer in any activity
17 that involves direct or indirect contact with any
18 children under the age of 18 without the written
19 permission of the United States Probation Officer.

20 Under no circumstances may the defendant be engaged in
21 the position that involves being in a position of trust
22 or authority over any person under the age of 18.

23 The Court will hold open the issue of restitution
24 for 90 days pursuant to 18 U.S.C., Section 3663A and will
25 allow for the submission of further filings with regard

1 to the issue of restitution.

2 It is further ordered that the defendant shall pay
3 the United States a Special Assessment in the amount of
4 \$200.

5 The court finds that the defendant does not are
6 the ability to pay a fine or interest. And having
7 considered the factors noted in 18 U.S.C., Section
8 3572(a), the Court will waive the payment of a fine and
9 interest in this case. Payment of the criminal monetary
10 penalty shall be due and payable immediately. The
11 defendant shall forfeit her interest in those properties
12 as set out in the consent order and judgment of
13 forfeiture entered by the Court in this matter as
14 document 51 in the docket of this case which was entered
15 by the Court on September 19, 2012.

16 The Court has considered the financial and other
17 information contained in the presentence report and finds
18 that the following is feasible. If the defendant is
19 unable to pay any monetary penalty immediately, during
20 the period of imprisonment payments shall be made through
21 the Federal Bureau of Prisons Inmate Financial
22 Responsibility program. Upon release from imprisonment
23 any remaining balance shall be paid in monthly
24 installments of no less than \$50 to commence within 60
25 days after release until paid in full.

1 Throughout the period of supervision, the
2 probation officer shall monitor the defendant's economic
3 circumstances and shall report to the Court with
4 recommendations, as warranted, any material changes that
5 affect the defendant's ability to pay any court-ordered
6 penalties.

7 Mr. Stewart, are there any other issues regarding
8 either the sentence or the judgment that need to be
9 addressed?

10 MR. STEWART: You might have mentioned it but did
11 you make a recommendation -- I request the Court make a
12 recommendation that whatever sort of sex offender therapy
13 was available and she participate in it.

14 THE COURT: I believe I included that. But just
15 in case I somehow skipped over that, I'll read that
16 portion again. The Court recommends that this defendant
17 participate in a sex offender treatment program during
18 the period of incarceration if eligible.

19 MR. STEWART: That's fine.

20 THE COURT: I believe that was probably included
21 before but, just in case it was not, I include that now.

22 MR. STEWART: That would be our only request, Your
23 Honor.

24 MS. RANDALL: Your Honor, with regard to the
25 contact with the victim. My understanding is the

1 standard condition and that they have to contact
2 probation applies on supervised release. For the time
3 she's incarcerated, if we could add a condition that she
4 is to have no contact with the victim except as initiated
5 by the victim and supervised by a third party, or
6 something along those lines. That would allow there
7 still to be supervised contact while she is in custody
8 until the standard condition comes into effect when she's
9 on supervised release.

10 Normally, in these cases when I want no contact I
11 ask the judge to -- I haven't done this in front of you
12 yet -- order a no contact -- a provision as part of the
13 judgment and then a contempt of court order charges.
14 Because my understanding is during that time she's
15 incarcerated there is really nothing preventing her from
16 contacting the victim, because her "no contact" hasn't
17 come into effect yet. So if we could do so some sort of
18 condition of her judgment that she is to have no contact,
19 except initiated by the victim and supervised by,
20 ideally, a guardian ad litem or her therapist to be there
21 with her for it.

22 THE COURT: Well, in terms of how that will be
23 supervised, is that even within my purview? Or, is that
24 within the purview of the Bureau of Prisons?

25 MS. RANDALL: Your Honor, that's a good question.

1 Maybe I can tell you kind of what our goal is, to help
2 you phrase it. We know at some point Ms. Tipton is going
3 to be sent somewhere in the Bureau of Prisons. We don't
4 know where she's going to be designated yet. After
5 talking to the guardian ad litem -- I believe her father
6 is in agreement with us doing this. The guardian ad
7 litem and the therapist thought it would be helpful for
8 her mental health for her to see her mother before she
9 gets sent off. So they were going to try to arrange to
10 do it before she leaves the Madison County Jail.

11 THE COURT: Mr. Stewart, do you want to say
12 something in response?

13 MR. STEWART: Your Honor, please. There's been
14 some communication between the guardian's office and
15 Mr. Jackson and I've not been a party to that. I
16 understand the course of those communications has sort of
17 evolved to the point where they want the victim or
18 victims to have some opportunity to meet with the
19 defendant. That's something we're wholly in favor of
20 under whatever terms, restrictions, conditions,
21 supervision, whatever may be required by the Court or the
22 probation office, or even the guardian herself. That's
23 fine with us. We'll certainly go forward with that. We
24 think that would be therapeutic. In this case we think
25 that might be helpful, certainly, for all parties.

1 THE COURT: I will recommend that during the
2 period of incarceration -- recommend to the Bureau of
3 Prisons that during the period of incarceration that the
4 defendant will have no contact with the victim or any of
5 the victim's family members except as initiated by the
6 victim and/or the victim's guardian ad litem or the
7 victim's therapist, and that any contact be supervised by
8 either the guardian ad litem or Bureau of Prisons
9 personnel. Anything else, Ms. Randall?

10 MS. RANDALL: No, Your Honor, although I do
11 believe we still needed to approach the bench to put on
12 the record about what Mr. Stewart's objections.

13 THE COURT: Well, we'll just reserve that and
14 we'll put that on the record after we adjourn.

15 MS. RANDALL: Okay.

16 THE COURT: I know that there are some objections
17 that Mr. Stewart has raised and that he wants to
18 preserve for the purposes of the record, and we'll allow
19 that. Anything else?

20 MS. RANDALL: No, Your Honor.

21 MR. STEWART: No, sir, Your Honor.

22 THE COURT: Ms. Randall is there a count that
23 needs to be dismissed?

24 MS. RANDALL: Yes, Your Honor. At this time we
25 would move to dismiss Count One of the indictment.

1 THE COURT: That will be allowed. Count One of
2 the indictment as to Ms. Tipton is hereby dismissed.

3 Ms. Tipton, you have the right to appeal this
4 sentence to the Fourth Circuit Court of Appeals on any
5 grounds that you've not previously waived. You've
6 pleaded "guilty" pursuant to a plea agreement. That plea
7 agreement includes some waivers that may substantially
8 affect your appeal rights. You will need to consult with
9 your attorney as to what effect those waivers may have.

10 However, if you choose to appeal, you must file a
11 written notice of appeal with the clerk of this court
12 within a period of 14 calendar days following the date of
13 the entry of the final judgment in this case. If you
14 wish to appeal but do not have the funds with which to
15 appeal, you may file an affidavit of indigency and, if
16 approved by the court, you may appeal at government
17 expense. Do you understand this right of appeal as I
18 have explained it to you?

19 THE DEFENDANT: Yes.

20 THE COURT: Well, that will conclude this matter.
21 The defendant is remanded to the custody of the marshal.

22 I will say again that this is one of the most
23 unusual cases I've seen. I didn't think that I would
24 ever see a case like this but, Ms. Tipton, it is from
25 here that you need to pick up the pieces. I don't know

1 how you do that. I think that you've done some things
2 that have torn your life apart, as well as others, but
3 from here it is -- you're going to have to do what you
4 can to pick up the pieces.

5 That concludes this matter. The defendant is
6 remanded to the marshal.

7 (Off the record at 12:14 p.m.)

8 (Defendant excused from the courtroom.)

9 (On the record at 12:17 p.m.)

10 (Whereupon, Counsel vouched the record.)

11 MR. STEWART: In the judges chambers he was -- in
12 the judge's chambers, in anticipation of the hearing, the
13 Court was given an opportunity to look at some of the
14 sentencing exhibits offered by the government in this
15 case. In particular, there was a DVD disk, and I think
16 that was marked as Government's Exhibit 1. And he was
17 asked to preview that or look at that in chambers. The
18 defense objected to that.

19 There was also a transcription of that tape, and I
20 think it was labeled as Government's Exhibits 1, 1A and
21 B. I objected to the admission of those exhibits as
22 well. I didn't think they were pertinent, and I thought
23 they were too late in their disclosure and I didn't think
24 they needed to be examined by the presiding judge at a
25 time of the hearing.

1 The judge reviewed it, overruled it, and they were
2 used in the sentencing procedure. So that was the basis
3 of it.

4 (Off the record at 12:18 p.m.)

5
6 **CERTIFICATE**

7 I, Tracy Rae Dunlap, RMR, CRR, an Official Court
8 Reporter for the United States District Court for the
9 Western District of North Carolina, do hereby certify
10 that I transcribed, by machine shorthand, the proceedings
11 had in the case of UNITED STATES OF AMERICA versus
12 DEBORAH LEE TIPTON, Criminal Action Number 1:12-CR-25 on
13 September 18, 2013.

14 In witness whereof, I have hereto subscribed my
15 name, this 2nd of December 2013.

16
17 __/S/__Tracy Rae Dunlap__
18 TRACY RAE DUNLAP, RMR, CRR
19 OFFICIAL COURT REPORTER
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